

# TRANSCRIPT OF RECORD.

---

---

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1921.

No. [REDACTED]

1022  
200

HENRY E. STEVENS, JR., PETITIONER,

vs.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, AND REAL  
ESTATE TITLE INSURANCE & TRUST COMPANY OF  
PHILADELPHIA, EXECUTORS, &c.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT.

---

---

PETITION FOR HABEAS CORPUS FILED OCTOBER 21, 1921.  
CERTIORARI AND RETURN FILED JANUARY 21, 1922.

(28,553)

(28,553)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 598.

HENRY E. STEVENS, JR., PETITIONER,

*vs.*

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, AND REAL  
ESTATE TITLE INSURANCE & TRUST COMPANY OF  
PHILADELPHIA, EXECUTORS, &c.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT.

INDEX.

	Original.	Print.
Record from the United States district court for the district of New Jersey.....	1	1
Petition for and order allowing appeal and fixing bond....	1	1
Bond on appeal.....	3	2
Citation on appeal.....	6	4
Bill of complaint.....	7	5
Answer .....	15	9
Exhibit A—Bill.....	27	15
B—Amended bill.....	33	18
C—Answers .....	39	22
D—Replication .....	51	29
E—Order dismissing bill.....	52	30
F—Decree of affirmance and remittitur.....	53	30
Amendment to answer.....	54	31
Order to amend.....	57	32
Additional order to amend.....	60	34



	Original.	Print.
Order to file answer to amendment.....	71	40
Complainant's answer to counter claim.....	72	41
Order for substitution.....	83	47
Order amending bill.....	84	47
Testimony of John P. Ashmead.....	89	50
Harry E. Yates.....	116	61
Ezra A. Somers.....	126	70
Walter Somers.....	128	71
Silas Seely.....	137	76
Thomas J. Horner.....	146	80
Alfred B. Smith.....	172	94
Joab Higbee.....	182	100
Joseph C. Hoffman.....	188	103
William Arthur Urquhart.....	190	104
James Mills.....	199	110
Charles F. Atkin.....	204	113
Lewis Rowland.....	209	115
James W. Lee.....	244	135
John P. Ashmead (recalled).....	254	140
Clark S. Barrett.....	255	141
Ester D. Rightmire.....	263	145
Barclay H. Bulloc.....	271	149
John W. Wilson.....	279	154
John H. Graham.....	283	156
Timothy Howell Parker.....	289	159
John P. Ashmead (recalled).....	303	167
Exhibit D—Opinion of district court, Haight, J.....	317	175
Exhibit E—Decree of district court.....	345	191
Assignment of errors.....	351	194
Docket entries.....	355	196
Exhibit P: 9—Deed, McClees to Wootton.....	366	199
P-10—Abstract of deed, McClees to Eby.....	366	200
P-11—Deed, Camden and Atlantic Land Co. to McVey .....	367	200
P-12—Conveyance, McVey <i>et als.</i> to McClees.....	368	201
P-15—Deed, McClees to Atlantic City Beach Front Imp. Co.....	369	201
P-16—Conveyance, Atlantic City Beach Front Imp. Co. to Henderson.....	370	202
P-17—Conveyance, Atlantic City Beach Front Imp. Co. to States Avenue Land Co.....	371	203
P-18—Conveyance, Henderson <i>et als.</i> to Conrow...	372	203
P-19—Conveyance, Conrow to States Avenue Land Co. ....	373	204
P-20—Conveyance, States Avenue Land Co. to Dewey Land Co.....	374	205
P-21—Deed, Dewey Avenue Land Co. to S. F. Nird- linger .....	375	205
P-22—Record of deed, Dewey Land Co. to Nird- linger .....	376	206

# INDEX.

iii

Original. Print.

Exhibit P 23—Record of deed, Dewey Land Co. to Nirdlinger .....	377	207
P 24—Deed, Dewey Land Company to Stern.....	378	208
P 25—Deed, Nirdlinger to Stern.....	379	208
P 26—Deed, Stern to Nirdlinger.....	380	209
P 27—Record of deed, Stern to Dewey Land Co....	381	210
P 28—Record of deed, Dewey Land Co. to Nirdlinger .....	382	210
P 29—Petition filed in court of chancery to open final decree in Dewey Land Co. <i>vs.</i> Stevens.	383	211
D 2—Abstract of conveyance, Atlantic City Beach Front Improvement Company to Burkhard .....	390	215
D 3—Abstract of conveyance, Atlantic City Beach Front Improvement Company to Burkhard .....	391	215
D 4—Abstract of conveyance, Burkhard to Bartlett .....	392	216
D 6—Certified copy of deed, New Jersey to Bartlett .....	393	216
D 7—Original deed, Bartlett to Stevens.....	400	220
Record from the United States circuit court of appeals for the third circuit.....	405	223
Caption .....	405	223
<i>Per curiam</i> , adopting opinion of Haight, J., as opinion of court of appeals.....	406	223
Decree .....	408	224
Mandate .....	409	224
Clerk's certificate.....	412	226
Writ of certiorari and return.....	414	226

1

*Petition for Appeal.*

United States District Court for the District of New Jersey.

In Equity.

SAMUEL F. NIRDLINGER, Plaintiff,

VS.

HENRY E. STEVENS, JR., Defendant.

*Petition for Appeal.*

To the Honorable the Judges of the District Court of the United States for the District of New Jersey:

The above-named Henry E. Stevens, Jr., feeling aggrieved by the decree rendered and entered in the above-entitled cause on the twenty-fourth day of May, nineteen hundred and twenty, does hereby appeal from the said decree to the Circuit Court of Appeals for the Third Circuit, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and document upon which said decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Third Circuit, under the rules of such court in such cases made and provided.

2 And your petitioner further prays that the proper order relating to the required security to be required of him be made.

CARR & CARROLL,

*Attorneys for Henry E. Stevens, Jr.*

Appeal allowed upon giving bond as required by law for the sum of \$250.

J. L. BODINE,  
*Judge.*

[Endorsed:] Filed Nov. 19, 1920, at 9 o'clock A. M. George T. Cranmer, Clerk.

*Bond on Appeal.*

United States District Court for the District of New Jersey.

In Equity.

SAMUEL F. NIRDLINGER, Plaintiff,

VS.

HENRY E. STEVENS, JR., Defendant.

*Bond on Appeal.*

Know all men by these presents, that we, Henry E. Stevens, Jr., of the City and County and State of New York, as principal, and United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland, as surety, are held and firmly bound unto Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance and Trust Company of Philadelphia, executors and trustees under the will of Samuel F. Nirdlinger, deceased, in the sum of two hundred and fifty dollars (\$250), lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment, well and truly to be made, we bind ourselves and our respective heirs, executors, administrators and successors, by these presents.

Sealed with our seals and dated this twentieth day of November, 1920.

4       Whereas the above-named Henry E. Stevens, Jr., has prosecuted a writ of error to the United States Circuit Court of Appeals for the Third Circuit to reverse the judgment of the United States District Court for the District of New Jersey, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named Henry E. Stevens, Jr., shall prosecute his said appeal to effect and answer all costs if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

HENRY E. STEVENS, JR. [L. S.]  
UNITED STATES FIDELITY & GUARANTY  
CO.,

By E. D. SNYDER, [SEAL.]  
*Attorney-in-Fact.*

The within bond approved as to form and sufficiency.

J. L. BODINE,  
*Judge.*

STATE OF NEW JERSEY,  
*County of Camden, ss:*

On the twentieth day of November, 1920, personally appeared before me Henry E. Stevens, Jr., known to me to be one of the persons described in and who duly executed the foregoing instrument as a party thereto, and acknowledged for himself that he executed the same as his free act and deed for the purposes therein set forth.

HENRY E. STEVENS, JR.

5 Subscribed and sworn to before me this twentieth day of  
November, A. D. 1920.  
[SEAL.]

WILLIAM R. DORAN,  
*Notary Public of N. J.*

STATE OF NEW JERSEY,  
*County of Camden, ss:*

On the twentieth day of November, 1920, personally appeared before me E. D. Snyder, and known to me to be the person who executed the foregoing instrument as attorney-in-fact for the United States Fidelity and Guaranty Company, the surety therein named, and the said E. D. Snyder acknowledged that she executed the same as the free act and deed of the United States Fidelity and Guaranty Company, for the purposes therein set forth.

E. D. SNYDER.

Subscribed and sworn to before me this twentieth day of November,  
A. D. 1920.  
[SEAL.]

WILLIAM R. DORAN,  
*Notary Public of N. J.*

The within bond is approved both as to sufficiency and form  
this — day of November, 1920.

\_\_\_\_\_  
*Judge.*

[Endorsed:] Filed Nov. 27, 1920, at 9 o'clock, A. M. George  
T. Cranmer, Clerk.

*Citation on Appeal.*

(Filed Dec. 7, 1920.)

United States District Court for the District of New Jersey.

In Equity.

SAMUEL F. NIRDLINGER, Plaintiff,

vs.

HENRY E. STEVENS, JR., Defendant.

*Citation on Appeal.*

UNITED STATES OF AMERICA, ss:

To Arthur S. Arnold, Abram L. Erlanger, and Real Estate Title Insurance and Trust Company of Philadelphia, executors and trustees under the will of Samuel F. Nirdlinger, deceased, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Third Circuit, to be held at the City of Philadelphia, in the State of Pennsylvania, on the seventeenth day of December, 1920, pursuant to an order allowing an appeal filed and entered in the clerk's office of the District Court of the United States for the District of New Jersey from a final decree signed, filed and entered on the twenty-fourth day of May, 1920, in that certain suit wherein you are the substituted plaintiffs in place of Samuel F. Nirdlinger, deceased, and Henry E. Stevens, Jr., is defendant and appellant, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Given under my hand, at the City of Trenton, in the District of New Jersey in the Third Circuit the 27 day of November 1920.

J. L. BODINE,  
*Judge.*

Service of a copy of the within citation acknowledged this 4 day of Dec. 1920.

BOURGEOIS & COULOMB,  
*Solrs. of Plaintiff.*



*Bill of Complaint.*

District Court of the United States for the District of New Jersey.

To the Honorable the Judges of the District Court of the United States for the District of New Jersey:

Samuel F. Nirdlinger, a resident and citizen of the City and County of Philadelphia, in the State of Pennsylvania, and a resident and citizen of said state, brings his bill of complaint against Henry E. Stevens, Jr., a resident and citizen of the City, County and State of New York, and thereupon your orator complains and says:

8        1. That he is the owner in fee simple of all that certain tract or parcel of land and premises situate, lying and being in the City of Atlantic City, in the County of Atlantic and State of New Jersey, bounded and described as follows:

Beginning at a point in the easterly line of New Hampshire Avenue, two hundred and forty feet southwesterly from Pacific Avenue, said point being the southeast corner of New Hampshire Avenue and Dewey Place; thence extending (1) eastwardly parallel with Pacific Avenue and along the south line of Dewey Place, one hundred and ninety feet; thence (2) southwardly parallel with New Hampshire Avenue to the present high water line of the Atlantic Ocean, about, to wit, four hundred and forty-two feet more or less; thence (3) southwesterly along the present high water line of the Atlantic Ocean to the easterly line of New Hampshire Avenue, extended; thence (4) Northerly along said line of New Hampshire Avenue to the place of beginning, to wit, about five hundred and seventy-seven feet, more or less.

Being part of the same premises, one-half whereof was conveyed to the said Samuel F. Nirdlinger by Louis E. Stern, by deed bearing date the seventeenth day of July, 1912, and recorded in the clerk's office of the County of Atlantic, on the 22nd day of July, 1914, in Book — of Deeds for said County, on pages —, etc.; and the remaining one-half whereof which was conveyed to the said Samuel F. Nirdlinger by deed of Dewey Land Company, dated the fourth day of February, 1914, and recorded in the said county clerk's office in Book 523, on pages 47, etc.

1½. And your orator further shows unto your Honor that the premises above described are the same premises conveyed by the States Avenue Land Company to the Dewey Land Company deed dated December 19th, 1904, and recorded in the office of the clerk of Atlantic County on January eleventh, 1905, in Book 313 of Deeds, page 363; that subsequently thereto, to wit, on the ninth day of December, A. D. 1907, the Dewey Land Company by deed of conveyance bearing that date, and recorded in the office of the clerk of Atlantic County in Book 382 of deeds, page 19, conveyed an equal undivided one-quarter part thereof to Samuel F. Nirdlinger, your orator; and that on the twentieth day of January,

1909, the Dewey Land Company by deed of conveyance, bearing that date, and recorded in the office of the clerk of Atlantic County in Book 395 of deeds, page 271, conveyed an equal undivided one-twelfth part in and to the said land and premises; that on the tenth day of February, 1909, the Dewey Land Company by deed dated that day, and recorded in the office of the clerk of the County of Atlantic in Book 398 of deeds, page 116, conveyed an equal undivided one-sixth part in and to the said premises, and that the deeds above set forth in paragraph one from Louis E. Stern to your orator, were the result of an amicable agreement by and between your orator and the Dewey Land Company whereby momentarily or temporarily the entire title was vested in the said Stern for the purpose of redistribution, in accordance with and respect to the interest of the Dewey Land Company, and your orator and the said Stern being seized of the said title divided the same, conveying to your orator an undivided one-half thereof, and to the Dewey Land Company the remaining one-half thereof; that your orator shortly subsequent to the time he received the first deed conveying one-fourth thereof in 1907 paid on behalf of himself and the

10 Dewey Land Company the taxes assessed upon the said premises, and assessment for street improvements abutting thereon, all of which were assessed and levied in the name of the Dewey Land Company and your orator, and the said premises were, from time to time, improved by grading, filling, curbing and paving, and the erection of jetties for the purpose of protecting same from the inroads of the sea, the cost and expense whereof was paid by your orator, whereby and in consequence thereof the said Dewey Land Company became indebted to your orator in a large sum, until finally on or about the fourth day of February, 1914, in consideration of the said indebtedness, and the further sum paid by your orator the said Dewey Land Company conveyed to your orator its remaining undivided one-half of said premises, as set forth in paragraph one, whereby your orator became seized and possessed of the whole thereof.

2. And your orator further shows unto your Honors, that he is and has, ever since he became the owner of said lands, been in peaceable possession thereof, and he believed and yet believes that he had and has a good title to said lands in fee simple, and has always claimed and does now claim to own the same accordingly.

3. And your orator further shows unto your Honors, that your orator's title to said lands, or part thereof, is denied and disputed by the said Henry E. Stevens, Jr., the defendant herein, and he the said Henry E. Stevens, Jr., claims, and is claimed and reputed to own said lands, or some part thereof, or some interest therein, or to have some encumbrance thereon, and no suit or action of  
11 any kind whatever is pending to enforce or test the validity of said title, claim or encumbrance, and your orator charges that said claim so made by the said Henry E. Stevens, Jr., is utterly without foundation, unjust and vexatious.

4. And your orator further shows unto your Honors, that by reason of such claim your orator's property in said lands is greatly affected, and the same cannot be sold as they otherwise could.

5. And your orator further shows unto your Honors, that he has applied to the said Henry E. Stevens, Jr., the defendant herein, to release and relinquish his said claim so as aforesaid asserted by him, or to bring in some court of law or equity a suit or suits which would test the validity thereof, but the said defendant has refused and still does refuse to do either.

6. And for a further cause of action your orator complains and shows unto your Honors that a portion of said lands and premises above described is beach land, appurtenant to and parcel of upland owned by your orators; that the said Henry E. Stevens, Jr., claims to have some interest in, lien upon or title to said lands, or part thereof, by virtue of a certain alleged grant from the State of New Jersey to William H. Bartlett and others, dated the 28th day of June, in the year nineteen hundred, and recorded in Book 248 of Deeds for Atlantic County, on page 475, etc., and made by Foster M. Voorhees, governor, Willard C. Fiske, John I. Holt, William Cloak and John J. Farrell, riparian commissioners of the State of New Jersey,

12        wherein and whereby said riparian commissioners did purport to grant and convey unto the said William H. Bartlett and Elwood S. Bartlett, certain lands and premises in said grant described, to which for greater certainty your orator begs leave to refer; and the said William H. Bartlett, being unmarried, and Elwood S. Bartlett and Ellen L., his wife, by their certain deed of conveyance dated the twenty-fifth of April, nineteen hundred and five, and recorded in Book 316 of Deeds for Atlantic County, on page 487, purported to grant, sell and convey unto the said Henry E. Stevens, Jr., certain lands and premises in said deed of conveyance particularly described, including the lands and premises described in said riparian grant, just referred to.

7. That the said claim of the said Henry E. Stevens, Jr., of title to, lien upon, or interest in said lands and premises by reason aforesaid is invalid and void; that the said riparian commissioners had no authority or right to make said grant, and the same is void and of no effect as against your orator; that the said riparian grant if held valid as against your orator would violate the constitution of the State of New Jersey and of the United States, by appropriating and taking property without due process of law, or payment of any compensation to the true owner thereof. And that even if said riparian commissioners at the time of making said alleged conveyance had any authority whatever to make the same, which your orator denies, they nevertheless exceeded such authority in the alleged grant aforesaid, and included therein lands and premises (being part of the premises hereinabove particularly described) the title of which at the time of making said alleged grant was in the name of the predecessors in title of your orator to said lands and entirely beyond the power or scope of said riparian commissioners.

13

8. And your orator further shows unto your Honors, that he has applied to the said Henry E. Stevens, Jr., the defendant herein, to release and relinquish his said claim so as aforesaid asserted by him, or to bring in some court of law or equity a suit or suits which would test the validity thereof, but the said defendant has refused and still does refuse to do either, and that while, as your orator insists and charges, the said claim is void and of no effect, nevertheless it purports to exist, and so long as it stands unchallenged remains a cloud upon the title of your orator, and injurious to your orator's rights therein, and should be removed.

9. The controversy herein is a controversy wholly between citizens of different states, and the matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of three thousand dollars.

Wherefore, inasmuch as your orator is relievable only in a court of equity, where matters of this sort by the inherent jurisdiction of this Court, as well as according to the statutes of the State of New Jersey, wherein said lands are located, are properly cognizable and relievable.

To the end, therefore, that the said defendant, Henry E. Stevens, Jr., may, but without oath or affirmation, to the best of his knowledge, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid, and more particularly that he may in manner aforesaid, answer and set forth specifically what title or claim to said lands, or any part thereof, or

14 any interest therein, or encumbrances thereon, he makes or claims, and to what part and what interest; and further, how and by what instrument such title is claimed or derived, or was created; and, by the determination and final decree of this Court, that the rights of all the parties to this suit in and to the lands hereinabove set forth, and every part thereof, may be fixed and settled, and that your orator may be decreed to have a perfect title thereto, and the said defendant to have no estate, interest in or encumbrance upon said lands, or any part thereof, and that his claims to the same are unjust, vexatious and void, and that the cloud upon the title of your orator to said lands and premises created and occasioned by the alleged riparian grant hereinabove referred to, and the deed of conveyance from William H. Bartlett and Elwood S. Bartlett and wife to the defendant hereinabove referred to may be, so far as said lands and premises are concerned, declared and decreed to be null and void, and of no effect as against your orator, and that your orator's right in and title to said lands and premises may be decreed to be relieved from the lien or cloud occasioned by said alleged riparian grant and deed of conveyance, and that the said defendant, Henry E. Stevens, Jr., may be likewise decreed to have no title or interest in or to said lands and premises by reason of said alleged riparian grant and deed, and that your orator may have such other and further relief as to your honors shall seem meet and shall be agreeable to equity.

And may it please your Honors, the premises considered, to grant unto your orator a writ of subpoena, issuing out of and under the seal

of this Honorable Court, to be directed to the said Henry E. Stevens, Jr., commanding him on a certain day and under a certain  
15 penalty therein to be specified, personally to be and appear before Your Honors in this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and further, to stand to, abide by and perform such order, direction and decree as to your Honors shall seem meet, and as shall be agreeable to equity and good conscience.

And your orator will ever pray, etc.

BOURGEOIS & COULOMB,  
*Solicitors for and of Counsel with Complainant.*

*Answer.*

United States District Court for the District of New Jersey.

In Equity.

Between

SAMUEL F. NIRDLINGER, Complainant,  
and

HENRY E. STEVENS, JR., Defendant.

The Answer of the Above-named Defendant to the Bill of Complaint of the Above-named Complainant.

In answer to the said bill I, Henry E. Stevens, Jr., say as follows:

16 1. I admit that Samuel F. Nirdlinger, the complainant, is the owner of a portion of the lands described in paragraph 1 of the bill of complaint. I deny that the said complainant has title to any portion of the lands hereinafter particularly described in paragraph 4c of this answer. I am without knowledge or information sufficient upon which to found a belief as to the conveyance made by Nirdlinger to Stern, and by Nirdlinger to Dewey Land Company.

1½. I admit that a conveyance of lands was made by the States Avenue Land Company to the Dewey Land Company, by deed dated December nineteenth, nineteen hundred and four, purporting to convey to Nirdlinger an equal undivided one-fourth part of the lands and premises in said deed particularly described, but I deny that the said deed contained the description set forth in paragraph 1 of said bill, and I further deny that the said Nirdlinger by said deed acquired title to any of that portion of the lands particularly described in paragraph 4c of this answer. I admit that on or about the twentieth day of June, nineteen hundred and nine, the Dewey Land Company made, executed and delivered unto Samuel F. Nirdlinger a deed purporting to convey to the said Nirdlinger in fee simple an equal undivided one-twelfth part in the lands and prem-

ises described in said deed, but I deny that the description in the said deed is the same as that set forth in paragraph 1 of said bill, and I deny that by virtue of the said deed title became vested in the said Nirdlinger to any portion of the lands and premises particularly described in paragraph 4c of this answer. I admit that on or about the tenth day of February, nineteen hundred and nine, the

17 Dewey Land Company made, executed and delivered to Samuel F. Nirdlinger a deed of conveyance purporting to convey to said Nirdlinger an equal undivided one-sixth part of the lands and premises in said deed described, but I deny that thereby title thereto became vested in the said Nirdlinger in and to any portion of the lands and premises particularly described in paragraph 4c of this answer. I have no knowledge, information or belief of the deeds above set forth in paragraph 1 from Louis E. Stern to the complainant. In fact, I find no allegation in paragraph 1 of such a conveyance. I have no knowledge, information or belief as to any conveyances between Stern, Dewey Land Company and the complainant, except as hereinabove admitted, nor have I any knowledge, information or belief of the purposes of such conveyances, if such conveyances were made, I have no knowledge, information or belief as to what taxes, if any, were paid by the Dewey Land Company or the complainant, nor of the erection of jetties for the purpose of protecting the premises described in the bill of complaint from the inroads of the sea or the cost or expense thereof, nor have I any knowledge, information or belief as to whether said expenses were paid or incurred.

2. I admit that the complainant is the owner of a part of the lands described in paragraph 1 of said bill, I deny that the complainant is the owner of that portion of said lands particularly described in paragraph 4c hereof. I deny that the complainant has any title whatever to that portion of the lands described in said bill that are embraced in paragraph 4c of this answer.

3. I admit that that portion of the lands described in the bill of complaint, particularly described in paragraph 4c of this  
18 answer, is owned by me in fee simple.

4. I deny that the complainant has any interest whatever in the lands particularly described in paragraph 4c of this answer, and aver the facts to be as follows:

4a. That William H. Bartlett, a single man, and Elwood S. Bartlett and wife, being then and there lawfully seized of the lands herein after particularly described, sold for a valuable consideration the said lands and made, executed and delivered to me a deed containing full covenants of warranty and seizen, conveying to me title in fee simple thereto, said deed being dated the twenty-fifth day of April, nineteen hundred and five, and recorded in the office of the clerk of Atlantic County in Book No. 316 of Deeds, at page 487 &c., and I further aver that a fee simple title to such portion of the said lands as lie below the high water line of the Atlantic Ocean was vested in the said William H. Bartlett and Elwood S. Bartlett



by a grant from the State of New Jersey by its deed of conveyance dated the twenty-eighth day of June, nineteen hundred, and recorded in the office of the clerk of the County of Atlantic in Book 248 of Deeds, at page 475. That the lands and premises conveyed by the said deed from William H. Bartlett and Elwood S. Bartlett and wife, dated April twenty-fifth, nineteen hundred and five, are particularly described as follows:

4b. Tract 1.—All that certain tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

19 Beginning in the westerly line of New Hampshire Avenue two hundred and fifty feet southwardly from the southerly line of Pacific Avenue; thence westerly parallel with Pacific Avenue one hundred and sixty feet; thence northwardly parallel with New Hampshire Avenue one hundred feet; thence westwardly parallel with Pacific Avenue fifteen feet; thence southwardly parallel with New Hampshire and Vermont Avenues two hundred and fifty feet to the northerly line of Oriental Avenue; thence continuing the same course parallel with said New Hampshire and Vermont Avenues and crossing Oriental Avenue to the high water mark of the Atlantic Ocean; thence northeastwardly along the high water mark to the westerly line of New Hampshire Avenue; thence northwardly along the westerly line of New Hampshire Avenue recrossing Oriental Avenue to the northerly line thereof; thence still along the westerly line of New Hampshire Avenue one hundred and fifty feet to the place of beginning.

4c. Tract No. 2.—Beginning at a point in the high water line of the Atlantic Ocean as the same existed in May, nineteen hundred, said point being distant three hundred and twenty-five feet southwardly at right angles from the southerly line of Pacific Avenue and one hundred and seventy-five feet eastwardly at right angles from the easterly line of Vermont Avenue, and extends thence (1) southwardly parallel with Vermont Avenue and distant one hundred and seventy-five feet eastwardly at right angles from the easterly line of the same one hundred and eighty-five feet to a point in the easterly line of lands under water granted by the State of New Jersey to

20 Walter B. Dick, December twenty-eighth, eighteen hundred and ninety-nine; thence (2) southeastwardly in a straight line and along the easterly line of lands as above granted to Walter B. Dick seven hundred and twenty-nine and thirty-eight one hundredths feet to a point in the exterior line established by the riparian commissioners of the State of New Jersey, said point being distant three hundred and seventy-eight feet northeastwardly along said exterior line from where it is intersected by the easterly line of Vermont Avenue extended southerly; thence (3) northeastwardly along said exterior line curving to the left on a radius of four thousand feet; four hundred and ninety-four feet to a point; thence (4) northwestwardly in a straight line seven hundred and forty-four and thirty-nine hundredths feet to a point in the high water line of the

Atlantic Ocean where the same is intersected by the westerly line of New Hampshire Avenue, said point being distant two hundred and fifty feet southwardly from the south line of Pacific Avenue; thence (5) southwesterly along the said high water line to the place of beginning.

4d. I charge and aver that I am lawfully seized in fee simple of all that part of the lands and premises contained in the bill of complaint which are embraced in the second tract described in paragraph 4 lying eastwardly of the easterly line of New Hampshire Avenue and more particularly described as follows:

4e. Beginning at the intersection of the easterly line of New Hampshire Avenue with the fourth course in the above description of tract No. 2; thence extending southwardly along the easterly line of New Hampshire Avenue extended to a point in the exterior line established by the riparian commissioners where it is intersected by the easterly line of New Hampshire Avenue extended southwardly; thence eastwardly along said exterior line curving to the left on a radius of four thousand feet to where the said exterior line intersects the fourth course of the said description; thence northwestwardly in a straight line to a point intersecting the easterly line of New Hampshire Avenue, being the place of beginning.

5. I deny that the complainant has applied to me to release or relinquish my claim to any of the above described lands. I deny that I have been requested to bring a suit or action in some court of law or equity to test the validity of my claim, but aver the facts to be that on the second day of October, nineteen hundred and nine, the Dewey Land Company, a then predecessor in the title as to an undivided one-half interest in said lands and the present complainant as the owner of the other one-half interest, filed its bill of complaint in the Court of Chancery of New Jersey against me and James W. Northup, a mortgagee, setting up its claim of title against me and the said Northup, and praying therein, inter alia, as follows:

"That the said defendants \* \* \* answer and set forth specifically what title or claim to said lands, or any part thereof, or any interest therein, they or either of them, make or claim, and to what part or what interest; and further how, and by what instrument said title is claim- or derived or was created; and that by the determination and final decree of this court, the rights of all the parties to the suit in and to the lands hereinbefore set forth, and every part thereof may be fixed and settled; and that your orators may be decreed to have a perfect title thereto, and the defendants to have no estate, interest in, or encumbrance on, said lands or any part thereof; and that their claims to the same are unjust, vexatious and void."

5a. An answer was filed in said suit by both of the defendants therein, and such further proceedings were had therein that the issues raised thereby were, on the second day of February, nineteen

hundred and twelve, tried before the Honorable Edwin Robert Walker, one of the Vice-Chancellors of said Court, and a final decree was entered therein after a trial upon the merits, which said final decree was filed on the seventh day of September, nineteen hundred and twelve, and reads as follows:

"This matter coming on to be heard on the second day of February, nineteen hundred and twelve, in the presence of Robert H. Ingersoll and George A. Bourgeois, of counsel with the complainants, and of Wilson & Carr, of counsel with the defendants; and the Court having heard and considered the proofs, and the arguments of respective counsel; and it appearing to the satisfaction of the Court that the complainants are not entitled to any relief whatsoever by reason of the matters and things in their bill of complaint contained and set forth, and that said bill ought to be dismissed with costs;

It is thereupon on this seventh day of September, nineteen hundred and twelve, on motion of Wilson & Carr, solicitors for and of counsel with the defendants, ordered that the complainants' bill of complaint be and the same is hereby dismissed with costs.

23 And it is further ordered that a fee of one hundred and fifty dollars be and the same is hereby allowed to the solicitors of the defendants, and the same to be taxed as part of the costs of this suit and to be collectible therewith.

E. R. WALKER, C."

5b. Thereafter said final decree was appealed to the New Jersey Court of Errors and Appeals, and the said decree was affirmed by the final decree of that court entered on the fifteenth day of June, nineteen hundred and fourteen.

5c. I annex hereto, and hereby make a part hereof, the following papers in the said suit lately pending in the New Jersey Court of Chancery:

- (a) Bill of complaint.
- (b) Amended bill of complaint.
- (c) Answer.
- (d) Replication.
- (e) Final decree of Court of Chancery.
- (f) Final decree and remittitur of Court of Errors and Appeals.

5d. I do further show that the complainant herein is barred from any relief as to the matters and things set forth in said bill, because said complainant was both a party to and privy in the estate with the complainant in the said suit in the New Jersey Court of Chancery, and that the decree of the said New Jersey Court of Chancery, affirmed by the New Jersey Court of Errors and Appeals, is *res judicata* of all matters in controversy herein, and established a title in the defendant herein as to the lands particularly described in para-

graph 4e, superior to and in exclusion of that of the complainant, and I pray that the Court may call up and dispose of the questions raised by the defense of res judicata prior to final hearing.

6. I admit that a grant was made from the State of New Jersey to William H. Bartlett and others, dated the twenty-eighth day of June, nineteen hundred. I admit that William H. Bartlett, Elwood Bartlett and Ellen I. Bartlett, his wife, by their certain deed of conveyance, dated the twenty-fifth day of April, nineteen hundred and five, granted and conveyed to me the lands and premises therein particularly described, including the lands and premises described in the riparian grant from the State of New Jersey to Bartlett above mentioned, and I aver that by virtue of said conveyances a good and sufficient fee simple title in law and in equity was vested in me, and I do further aver that such title is exclusive of and superior to any title of the complainant in and to the lands described in said deed of conveyance in this paragraph mentioned.

7. I deny that my claim of title to, lien upon, and interest in the lands and premises described in paragraph 4e of this answer is invalid and void. I deny that the riparian commissioners had no right to make the said grant. I deny that the same is of no effect against the complainant. I deny that the said riparian grant violates the constitution of the State of New Jersey and that of the United States in any manner whatsoever. I deny that the said riparian commissioners exceeded their authority in making the said riparian grant and I deny that title was at the time of the said grant in the State

25 Avenue Land Company by virtue of a deed made by the Atlantic City Beach Front Improvement Company to said State Avenue Land Company, as set forth in paragraph 7, and I deny that the title to the easterly one hundred feet bounding along the westerly ninety feet of said lands was at the time of the making of the said riparian grant in Charles G. Henderson, Jr., J. Franklin Moss, and John C. Hancock under and by virtue of a deed made by Atlantic City Beach Front Improvement Company to the said Henderson, Moss and Hancock, as set forth in the bill of complaint. I deny all other allegations in paragraph 7 of said bill not here otherwise specifically denied.

8. I have fully answered the allegation of this paragraph in the foregoing paragraphs of this answer.

9. I admit the diversity of citizenship, and that the amount in controversy exceeds in value the sum of three thousand dollars.

By Way of Counter-Claim in the nature of a cross bill I show that the present suit is vexatious and without just cause, and is intended to unduly annoy and embarrass my title after the same has been established by the court of last resort of this State, and that the constant and unfounded claim by the complainant of title to that portion of the lands embraced in the riparian grant made by the State of New Jersey to the Bartletts, and conveyed by the Bartletts to

myself, injuriously affects my title thereto and renders the same unmarketable.

I therefore pray that it may be adjudicated in this suit that my title to the said lands is paramount to and exclusive of any title of the complainant therein or thereto, and that upon such adjudication the complainant be directed to execute a proper instrument in writing, duly acknowledged, retracting any claim to the lands owned by myself, and particularly described in paragraph 4e of this answer, and that said complainant, his servants and agents, be perpetually enjoined from thereafter making any claim thereto arising out of any matter or thing set forth in said bill of complaint, and from making or attempting to make any conveyance, lease, assignment or transfer of any interest in my said lands, and particularly described in paragraph 4e of this answer, where said conveyances, lease, assignment or transfer is based upon any alleged right or claim of the said complainant existing at the time of the filing of the said bill.

I further pray that that portion of the answer which includes a set-off or counter-claim may be answered by the complainant within the time prescribed by the rules of this court, without oath or affirmation.

I further pray that said bill of complaint be dismissed with costs.

WILSON & CARR,  
HARVEY F. CARR,

*Counsel, Attorneys for and of Counsel with Defendant.*

#### EXHIBIT A.

Between

DEWEY LAND COMPANY et al., Complainants and Appellants,  
and

HENRY E. STEVENS, JR., et al., Defendants and Respondents.

On Bill to Quiet Title.

*Bill.*

In Chancery of New Jersey.

To His Honor Mahlon Pitney, Chancellor of the State of New Jersey:

Complaining, shows unto your Honor your orators, The Dewey Land Company, a corporation of the State of New Jersey, and Samuel F. Nirdlinger, that on or about the nineteenth day of December, A. D. nineteen hundred and four, your orator, the said Dewey Land Company, purchased of the States Avenue Land Company, a corporation of the State of New Jersey, for a full valuable consideration, and the said Dewey Land Company conveyed by a deed containing

full covenants of warranty and seisin to your orator, The Dewey Land Company, all that certain tract or parcel of land and premises in the city of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

Beginning at a point in the easterly line of New Hampshire Avenue, two hundred and forty feet southwardly from Pacific Avenue, said point being the southeast corner of New Hampshire Avenue and Dewey Place, thence extending (1) eastwardly parallel with Pacific Avenue and along the south line of Dewey Place one hundred and ninety feet; thence (2) southwardly parallel with New Hampshire Avenue two hundred and ninety feet, more or less, to the high water-line of the Atlantic Ocean; thence (3) southwestwardly along the high water-line of the Atlantic Ocean, the several courses and distances thereof to the easterly line of New Hampshire Avenue; thence (4) northwardly along said line of New Hampshire Avenue four hundred and thirty-eight feet, more or less, to the place of beginning, which said deed was recorded in the clerk's office of Atlantic County at May's Landing, New Jersey, in book number 313 of deeds, pages 363, etc.

And that by reasons of the accretions of land in front of the said tract of land by alluvial deposits and the high water-line of the Atlantic Ocean being carried out, the said tract of land and premises is now described as follows:

Beginning at a point in the easterly line of New Hampshire Avenue, two hundred and forty feet southwardly from Pacific Avenue, said point being the southeast corner of New Hampshire Avenue and Dewey Place, thence extending (1) eastwardly parallel with Pacific Avenue and along the south line of Dewey Place one hundred and ninety feet; thence (2) southwardly parallel with New Hampshire Avenue five hundred and forty-five feet, more or less, to the high water-line of the Atlantic Ocean; thence (3) southwestwardly along the high water-line of the Atlantic Ocean, the several courses and distances thereof, to the easterly line of New Hampshire Avenue; thence (4) northwardly along said line of New Hampshire Avenue five hundred and fifty-eight feet, more or less, to the place of beginning.

29 And your orators further show that on or about the ninth day of December, A. D. nineteen hundred and seven, your orator, the said Samuel F. Nirdlinger, purchased of your orator, The Dewey Land Company, for a full valuable consideration, and the said The Dewey Land Company, conveyed by a deed containing full covenants of warranty and seisin to your orator, the said Samuel F. Nirdlinger, in fee simple, an equal undivided one-fourth part of said described lands and premises hereinbefore described, which said deed was recorded in the clerk's office of Atlantic County, in book number 382 of deeds, page 19, etc.

And your orators further show that on or about the twentieth day of January, A. D. nineteen hundred and nine, your orator, the said Samuel F. Nirdlinger, purchased of your orator, The Dewey Land Company, for a full valuable consideration, and said, The Dewey Land Company, conveyed by a deed containing full covenants



warranty and seisin to your orator, the said Samuel F. Nirdlinger, in fee simple, an equal undivided one-twelfth part of said described lands and premises hereinbefore described, which said deed was recorded in the clerk's office of said county in book number 395 of deeds, page 271, etc.

And your orators further show that on or about the tenth day of February, A. D. nineteen hundred and nine, your orator, the said Samuel F. Nirdlinger, purchased of your orator, The Dewey Land Company, for a full valuable consideration, and said, The Dewey Land Company conveyed by a deed containing full covenants of warranty, and seisin to your orator, the said Samuel F. Nirdlinger, in fee simple, an equal undivided one-sixth part of said described lands and premises hereinbefore described, which said deed was recorded in the clerk's office of said county of Atlantic in book number — of deed, page —.

That the said deeds are in your orators' possession and ready to be produced and proved as may be directed; and that your orators have, ever since the recording of the said deeds respectively, been in the peaceable possession of the lands therein and above described; and that at the time of purchasing said lands and taking said deeds your orators believed and yet believe that they and each of them bought and acquired a good title to said lands and of the said equal undivided one-half part thereof, and they have always claimed and do now claim to own the same accordingly.

That your orators' title to said lands, or some part thereof, is denied and disputed by Henry E. Stevens, Jr., who is one of the defendants in this suit; and he, one of the said defendants, claimed and is claimed and reputed to own said lands, or some part thereof, or some interest therein; and no suit or action of any kind whatever is pending to enforce or test the validity of such title or claim, and your orators charge that such claims so made by the said Stevens are utterly without foundation, unjust and vexatious.

That your orators' title to said lands, or some part thereof, is denied and disputed by one James W. Northup, said James W. Northup, claims to hold a mortgage against said lands, or some part thereof, by reason of an assignment from the Girard Trust Company, et al., and by reason of which assignment the said James W. Northup claims to have some interest therein; that no suit or action of any kind whatever is pending to enforce or test the validity of said title or claim by reason of said assignment, and your orators charge that such claims so made by the said Northup are utterly without foundation, unjust and vexatious.

That by reason of such claims your orators' property in said lands is greatly affected, and the same cannot be sold as they otherwise could.

That your orators have applied to both of said defendants to release and relinquish their said claims, or to bring in some court of law a suit or suits which would test the validity thereof, and the said defendants refuse to do either. And your orators hoped that

said defendants would have complied with such reasonable request as in justice and equity they ought to have done.

In consideration whereof, and forasmuch as your orators are relievable only in a court of equity, where matters of this sort are properly and according to the statutes of this State in such cases made and provided, cognizable and relievable.

To the end, therefore, that the said defendants, and every of them may without oaths or affirmations, to the best of their respective knowledge, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid; and more particularly that they, and every of them, may, in manner aforesaid answer and set forth specifically what title or claim to said lands or any part thereof, or any interest therein, they or either of them make or claim, and to what part or what interest; and further how and by what instrument such title is claimed or derived or was created; and that by the determination and final decree of this court the rights of all the parties to this suit in and to the lands hereinbefore set forth, and every part thereof, may be fixed and settled; and

32 that your orators may be decreed to have a perfect title thereto, and the defendants to have no estate, interest in, or encumbrance on, said lands, or any part thereof; and that their claims to the same are unjust, vexatious and void; and that your orators may have such other or further relief in the premises as the nature of the case may require, and as they shall be entitled to, pursuant to the statute in such case made and provided.

May it please your Honor, the premises considered, to grant to your orators a writ of writs of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said defendants, commanding them and each of them at a certain day and under a certain penalty therein to be specified, personally to be and appear before your Honor in this Honorable Court, then and there full, true, direct and perfect answer make to all and singular the premises, and further to stand to, abide and perform such order, direction and decree as to Your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your orators will ever pray, etc.

C. L. GOLDENBERG,

ROBERT H. INGERSOLL,

*Solicitors for and of Counsel for Complainant.*

33

# EXHIBIT B.

## *Amended Bill.*

In Chancery of New Jersey.

To His Honor Mahlon Pitney, Chancellor of the State of New Jersey:

Complainant shows unto your honor your orators, The Dewey Land Company, a corporation of the State of New Jersey, and

Samuel F. Nirdlinger, that on or about the nineteenth day of December, A. D. nineteen hundred and four, your orator, the said Dewey Land Company, purchased of the States Avenue Land Company, a corporation of the State of New Jersey, for a full valuable consideration, and said The Dewey Land Company conveyed by a deed containing full covenants of warranty and seisin to your orator, The Dewey Land Company, all that certain tract or parcel of land and premises in the city of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

Beginning at a point in the easterly line of New Hampshire Avenue two hundred and forty feet southwesterly from Pacific Avenue, said point being the southeast corner of New Hampshire Avenue and Dewey Place, thence extending (1) eastwardly, parallel with Pacific Avenue and along the south line of Dewey Place, one hundred and ninety feet; thence southwardly, parallel with New Hampshire Avenue, to the high water-line of the Atlantic Ocean as it existed in eighteen hundred and fifty-two; thence (3) southerly, along the high water-line of the Atlantic Ocean as it existed in eighteen hundred and fifty-two, to the easterly line of New Hampshire Avenue, extended; thence (4) northwardly, along said line of New Hampshire Avenue, to the place of beginning.

Conveyed to complainants by various deeds of conveyance.

34 And your orators further show that on or about the ninth day of December, A. D. nineteen hundred and seven, your orator, the said Samuel F. Nirdlinger, purchased of your orator, The Dewey Land Company, for a full valuable consideration, and said The Dewey Land Company conveyed, by a deed containing full covenants of warranty and seisin, to your orator, the said Samuel F. Nirdlinger, in fee simple, and equal undivided one-fourth part of said described lands and premises hereinbefore described, which said deed was recorded in the Clerk's office of Atlantic County, in Book No. 382 of Deeds, page 19, etc.

And your orators further show that on or about the twentieth day of January, A. D. nineteen hundred and nine, your orator, the said Samuel F. Nirdlinger, purchased of your orator, The Dewey Land Company, for a full valuable consideration, and said The Dewey Land Company conveyed, by a deed containing full covenants of warranty and seisin, to your orator, the said Samuel F. Nirdlinger, in fee simple, an equal undivided one-twelfth part of said described lands and premises hereinbefore described, which said deed was recorded in the Clerk's office of said county, in Book No. 395 of Deeds, page 271, etc.

And your orators further show that on or about the tenth day of February, A. D. nineteen hundred and nine, your orator, the said Samuel F. Nirdlinger, purchased of your orator, The Dewey Land Company, for a full valuable consideration, and said The Dewey Land Company conveyed, by a deed containing full covenants of warranty and seisin, to your orator, the Samuel F. Nirdlinger, in fee simple, an equal undivided one-sixth part of said de-

scribed lands and premises hereinbefore described, which said  
35 deed was recorded in the Clerk's office of said county of  
Atlantic, in Book No. — of Deeds, page —.

And your orators further show that on the first day of November,  
nineteen hundred and eleven John McClees conveyed to Dewey Land  
Company a certain tract of land, particularly described as follows:

All that certain tract or parcel of land and premises situate, lying  
and being in the City of Atlantic City, in the County of Atlantic and  
State of New Jersey, beginning in the middle line of New Hamp-  
shire Avenue, distant two hundred and fifteen feet southwardly from  
the southerly side of Pacific Avenue, thence extending eastwardly,  
parallel with Pacific Avenue, two hundred and fifteen feet, and of  
that width throughout, southeasterly between parallel lines parallel  
with the center line of New Hampshire Avenue, to the high water-  
mark of the Atlantic Ocean as the same existed on the fifteenth day  
of April, eighteen hundred and fifty-three.

And your orators further show that on the first day of February,  
nineteen hundred and twelve, Horace M. Leeds and Minnie A., his  
wife; Alberta L. Currie, widow; Harry B. Leeds and Harriet Scull  
Leeds, his wife; Leurilda Nice and Oliver T. Nice, her husband,  
and Oneida Richards, widow, heirs at law of Robert B. Leeds, de-  
ceased, conveyed to Dewey Land Company a tract of land, particu-  
larly described as follows:

All that certain tract or parcel of land and premises situate, lying  
and being in the City of Atlantic City, in the County of Atlantic  
and State of New Jersey, beginning at a point in the southerly line  
of Dewey Place two hundred and ten feet (210) west of the west  
line of Maine Avenue, and runs thence (1) southerly and  
36 parallel with Maine Avenue to high-water mark of the At-  
lantic Ocean or Absecon Inlet as it existed in the year 1852;  
thence (2) westerly, in and along said high-water mark, one hun-  
dred and ninety feet, more or less, to the east line of New Hampshire  
Avenue, if extended; thence (3) northerly, in the east line of the  
said New Hampshire Avenue, to the south line of Dewey Place;  
thence (4) eastwardly, in the south line of Dewey Place, one hun-  
dred and ninety feet, to the place of beginning.

And your orators further show that on the second day of Feb-  
ruary, nineteen hundred and twelve, Dewey Land Company, con-  
veyed unto your orator, Samuel F. Nirdlinger, the equal undivided  
one-half part of the lands so conveyed to it by the said McClees,  
Leeds and others, above described.

That the said deeds are in your orators' possession and ready to  
be produced and proved as may be directed; and that your orators  
have, ever since the recording of said deeds respectively, been in the  
peaceable possession of the lands therein and above described, and  
that at the time of purchasing said lands and taking said deeds your  
orators believed and yet believe that they and each of them bought  
and acquired a good title to said lands and of the said equal undi-  
vided one-half part thereof, and they have always claimed and do  
now claim to own the same accordingly.

That your orators' title to said lands, or some part thereof, is denied and disputed by Henry E. Stevens, Jr., who is one of the defendants in this suit; and he, one of the said defendants, claimed and is claimed and reputed to own said lands, or some part thereof, or some interest therein; and no suit or action of any kind  
37 whatever is pending to enforce or test the validity of such title or claim, and your orators charge that such claims so made by the said Stevens are utterly without foundation, unjust and vexatious.

That your orators' title to said lands, or some part thereof, is denied and disputed by one James W. Northup, who is one of the defendants in this suit; and he, the said James W. Northup, claims to hold a mortgage against said lands, or some part thereof, by reason of an assignment from the Girard Trust Company, et al., and by reason of which assignment the said James W. Northup claims to have some interest therein; that no suit or action of any kind whatever is pending to enforce or test the validity of said title or claim by reason of said assignment, and your orators charge that such claims so made by the said Northup are utterly without foundation, unjust and vexatious.

That by reason of such claims your orators' property in said lands is greatly affected, and the same cannot be sold as they otherwise could.

That your orators have applied to both of said defendants to release and relinquish their said claims or to bring in some court of law a suit or suits which would test the validity thereof, and the said defendants refuse to do either.

And your orators hoped that said defendants would have complied with such reasonable request, as in justice and equity they ought to have done.

In consideration whereof, and forasmuch as your orators are relievable only in a court of equity, where matters of this sort are properly, and, according to the statutes of this State in such case made and provided, cognizable and relievable.

To the end, therefore, that the said defendants, and every of them, may, but without oaths or affirmations, to the best of  
38 their respective knowledge, information and belief, full, true, direct and perfect answer make to all and singular the matters aforesaid; and more particularly that they, and every of them, may in manner aforesaid, answer and set forth specifically what title or claim to said lands, or any part thereof, or any interest therein, they or either of them, make or claim and to what part and what interest; and, further, how and by what instrument such title is claimed or derived or was created; and, by the determination and final decree of this court, the rights of all the parties to this suit in and to the lands hereinbefore set forth, and every part thereof, may be fixed and settled; and that your orators may be decreed to have a perfect title thereto, and the defendants to have no estate, interest in or encumbrance on said lands, or any part thereof; and that their claims to the same are unjust, vexatious and void; and that your orators may have such other or further relief in the premises as

the nature of the case may require, and as they shall be entitled to pursuant to the statute in such case made and provided.

May it please your honor, the premises considered, to grant to your orators a writ or writs of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said defendants, commanding them and each of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honor in this honorable court, then and there full, true, direct and perfect answer make to all and singular the premises, and further, to stand to, abide and perform such order, direction and decree as to your honor shall seem meet, and as shall be agreeable to equity and good conscience.

39 And your orators will ever pray, etc.

BOURGEOIS & COULOMB,

*Solicitors for and of Counsel with Complainants.*

### EXHIBIT C.

In Chancery of New Jersey.

Between

DEWEY LAND COMPANY et al., Complainants,

and

HENRY E. STEVENS, JR., et al., Defendants.

On Bill, etc.

*Answer.*

The Answer of Henry E. Stevens, Jr., to the Bill of Complaint of Dewey Land Company and Samuel F. Nirdlinger, Complainants.

This defendant, answering says:

1. That he admits that on or about the nineteenth day of December, nineteen hundred and four, the States Avenue Land Company made, executed and delivered to the Dewey Land Company and Samuel F. Nirdlinger a deed purporting to convey the lands and premises particularly described in the second paragraph of the bill of complaint, but this defendant denies that title to any portion of the said lands hereinafter particularly described in paragraph 7 of this answer thereby became vested in the complainants.

40 2. This defendant admits that the shore line of the said tract of land has been extended by alluvial deposits and that the high water line of the Atlantic Ocean has been carried out, but as to the exact extent thereof this defendant is ignorant and leaves the complainants to make proof thereof.

3. This defendant admits that on or about the ninth day of December, nineteen hundred and seven, the Dewey Land Company



made, executed and delivered its deed of conveyance to Samuel F. Nirdlinger, purporting to convey to the said Nirdlinger an equal undivided one-fourth part of the lands and premises particularly described in the said bill of complaint, but this defendant denies that thereby the said Nirdlinger acquired title to that portion of any of said lands particularly described in paragraph 7a of this answer.

4. This defendant admits that on or about the twentieth day of January, nineteen hundred and nine, the Dewey Land Company made, executed and delivered unto Samuel F. Nirdlinger a deed purporting to convey to the said Nirdlinger in fee simple, an equal undivided one-twelfth part in the said described lands and premises, but this defendant denies that thereby title thereto became vested in the said Nirdlinger as to any portion of the said lands and premises particularly described in paragraph 7a of this answer.

5. This defendant admits that on or about the tenth day of February, nineteen hundred and nine, the Dewey Land Company made, executed and delivered to Samuel F. Nirdlinger a deed of conveyance purporting to convey to the said Nirdlinger an equal undivided one-sixth part of the said described lands and premises, but this defendant denies that thereby title thereto became vested in the said Nirdlinger in and to any portion of the lands and premises particularly described in paragraph 7a of this answer.

6. This defendant admits that complainants' claim to title to that part of the lands described in the bill of complaint, which are embraced in the second tract described in this paragraph, is disputed by this defendant, and this defendant denies that the said complainants have title thereto. This defendant admits that no suit or action other than this cause is pending to enforce or test the validity of the title of this defendant. This defendant denies that the title claimed by him is without foundation, but avers the facts to be as follows:

6a. That William H. Bartlett, a single man, and Elwood S. Bartlett and wife, being then and there lawfully seized of the lands hereinafter particularly described, sold for a valuable consideration to this defendant the said lands and made, executed and delivered to this defendant a deed containing full covenants of warranty and seized to this defendant, conveying to this defendant title in fee simple thereto, said deed being dated the twenty-fifth day of April, nineteen hundred and five, and recorded in the Clerk's office of Atlantic County, in Book No. 316 of Deeds, at page 487, etc. And this defendant further avers that a fee simple title to such portion of the said lands as lie below the high-water line of the Atlantic Ocean was vested in the said William H. Bartlett and Elwood S. Bartlett by a grant from the State of New Jersey, by its deed of conveyance or grant dated the twenty-eighth day of June, nineteen hundred, and recorded in the office of the Clerk of the County of Atlantic in Book 248 of Deeds, at page 475. That the lands and premises conveyed

by the said deed from William H. Bartlett and Elwood  
42 Bartlett and wife, dated April twenty-fifth, nineteen hundred  
and five, are particularly described as follows:

6b. All that certain tract or parcel of land and premises situated  
in the City of Atlantic City, County of Atlantic and State of New  
Jersey, bounded and described as follows:

6c. Beginning in the westerly line of New Hampshire Avenue one  
hundred and fifty feet southwardly from the southerly line of Pacific  
Avenue; thence westerly parallel with Pacific Avenue one hundred  
and sixty feet; thence northwardly parallel with New Hampshire  
Avenue one hundred feet; thence westwardly parallel with Pacific  
Avenue fifteen feet; thence southwardly parallel with New Hampshire  
and Vermont Avenues two hundred and fifty feet to the northerly  
line of Oriental Avenue; thence continuing the same course  
parallel with said New Hampshire and Vermont Avenues and crossing  
Oriental Avenue to the high water-mark of the Atlantic Ocean; thence  
northeastwardly along the high water-mark to the westerly  
line of New Hampshire Avenue; thence northwardly along the  
westerly line of New Hampshire Avenue recrossing Oriental Avenue  
to the northerly line thereof; thence still along the westerly line of  
New Hampshire Avenue one hundred and fifty feet to the place  
beginning.

#### Tract No. 2.

6d. Beginning at a point in the high water-line of the Atlantic  
Ocean as the same existed in May, nineteen hundred, said point being  
distant three hundred and twenty-five feet southwardly at right  
angles from the southerly line of Pacific Avenue and one hundred  
and seventy-five feet eastwardly at right angles from the easterly line  
of Vermont Avenue, and extends thence (1) southwardly  
43 parallel with Vermont Avenue and distant one hundred and  
seventy-five feet eastwardly at right angles from the easterly  
line of the same one hundred and eighty-five feet to a point in the  
easterly line of lands under water granted by the State of New Jersey  
to Walter B. Dick, December twenty-eighth, eighteen hundred and  
ninety-nine; thence (2) southeastwardly in a straight line and also  
the easterly line of lands as above granted to Walter B. Dick seven  
hundred and twenty-nine and thirty-eight one hundredths feet to  
point in the exterior line established by the Riparian Commissioners  
of the State of New Jersey, said point being distant three hundred and  
seventy-eight feet northeastwardly along said exterior line from  
where it is intersected by the easterly line of Vermont Avenue extended  
southerly; thence (3) northeastwardly along said exterior line  
curving to the left on a radius of four thousand feet, four hundred  
and ninety-four feet to a point; thence (4) northwestwardly  
in a straight line seven hundred and forty-four and thirty-nine  
hundredths feet to a point in the high water-line of the Atlantic  
Ocean where the same is intersected by the westerly line of New  
Hampshire Avenue, said point being distant two hundred and fifty

et southwardly from the south line of Pacific Avenue; thence (5) southwesterly along the said high water-line to the place of beginning.

7. This defendant charges and avers that this defendant is lawfully seized in fee simple of all that part of the lands and premises contained in the bill of complaint, which are embraced in the second tract described in paragraph 6, lying eastwardly of the easterly line of New Hampshire Avenue, and more particularly described as follows:

7a. Beginning at the intersection of the easterly line of New Hampshire Avenue with the fourth course in the above description of tract No. 2; thence extending southwardly along the easterly line of New Hampshire Avenue extended to a point in the exterior line established by the Riparian Commissioners where it is intersected by the easterly line of New Hampshire Avenue extended southwardly; thence eastwardly along said exterior line curving to the left on a radius of four thousand feet to where the said exterior line intersects the fourth course of the said description; thence northwesterly in a straight line to a point intersecting the easterly line of New Hampshire Avenue, being the place of beginning.

And this defendant humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WILSON & CARR,

*Solicitors for Defendant Henry E. Stevens, Jr.*

I consent to the filing of the within answer out of time.

R. H. INGERSOLL,

*Solicitor for Complainants.*

*Answer.*

In Chancery of New Jersey.

Between

DEWEY LAND COMPANY et als., Complainants,

and

HENRY E. STEVENS, JR., et al., Defendants.

On Bills, etc.

The Answer of James W. Northrup to the Bill of Complaint of Dewey Land Company and Samuel F. Nirdlinger, Complainants.

This defendant, answering says:

1. That he admits that on or about the nineteenth day of December, nineteen hundred and four, the States Avenue Land Company

made, executed and delivered to the Dewey Land Company by Samuel F. Nirdlinger, a deed purporting to convey the lands and premises particularly described in the second paragraph of the bill of complaint, but this defendant denies that title to any portion of the said lands hereinafter particularly described in paragraph 46 of this answer thereby became vested in the complainants.

2. This defendant admits that the shore line of the said tract of land has been extended by alluvial deposits, and that the high water line of the Atlantic Ocean has been carried out, but as to the exact extent thereof this defendant is ignorant and leaves the complainants to make proof thereof.

3. This defendant admits that on or about the ninth day of December, nineteen hundred and seven, the Dewey Land Company made, executed and delivered its deed of conveyance to Samuel F. Nirdlinger, purporting to convey to the said Nirdlinger an equal undivided one-fourth part of the lands and premises particularly described in the said bill of complaint, but this defendant denies that thereby the said Nirdlinger acquired title to the portion of any of said lands particularly described in paragraph 7a of this answer.

4. This defendant admits that on or about the twentieth day of January, nineteen hundred and nine, the Dewey Land Company made, executed and delivered unto Samuel F. Nirdlinger a deed purporting to convey to the said Nirdlinger in fee simple, an equal undivided one-twelfth part in the said described lands and premises, but this defendant denies that thereby title thereto became vested in the said Nirdlinger as to any portion of the said lands and premises particularly described in paragraph 7a of this answer.

5. This defendant admits that on or about the tenth day of February, nineteen hundred and nine, the Dewey Land Company made, executed and delivered to Samuel F. Nirdlinger a deed of conveyance purporting to convey to the said Nirdlinger an equal undivided one-sixth part of the said described lands and premises, but this defendant denies that thereby title thereto became vested in the said Nirdlinger in and to any portion of the lands and premises particularly described in paragraph 7a of this answer.

6. This defendant admits that complainants' claim to title to the part of the lands described in the bill of complaint, which are embraced in the second tract described in this paragraph, is disputed by this defendant, and this defendant denies that the said complainants have title thereto. This defendant admits that no suit or action, other than this cause, is pending to enforce or test the validity of the title of this defendant. This defendant denies that the title claimed by him is without foundation, but avers the facts to be as follows:

6a. That William H. Bartlett, a single man, and Elwood S. Bartlett and wife, being then and there lawfully seized of the lands

hereinafter particularly described, did, on the eleventh day of September, nineteen hundred and two, make, execute and deliver to the Girard Trust Company, a corporation of the State of Pennsylvania, and Anita Berwind, administrators of the estate of Charles F. Berwind, deceased, a certain indenture of mortgage conditioned for the payment of the sum of twenty-five thousand dollars, at the expiration of three years from the date thereof, upon the lands and premises hereinafter particularly described, which said mortgage was afterwards assigned, transferred and set over by the said Girard Trust Company, and Anita Berwind, administrators of the estate of Charles F. Berwind, as aforesaid, to the Girard Trust Company, attorney for the heirs of Charles F. Berwind, deceased, by deed of assignment dated the thirty-first day of December, nineteen hundred and seven, and recorded in the clerk's office of the County of Atlantic, in Book 25 of Assignments of Mortgages, at page 279, and which said mortgage was afterwards assigned, transferred and set over by the said Girard Trust Company, attorney as aforesaid, to this defendant, James Northrup, by deed of assignment, dated the eighth day of May, nineteen hundred and eight, and recorded in the said clerk's office in Book 25 of Assignments of Mortgages, at page 413, and that by virtue thereof, this defendant lawfully claims a lien upon the lands and premises particularly described in the said mortgage. And this defendant further avers that a fee simple title to such portion of the said lands as lie below the high water line of the Atlantic Ocean was vested in the said William H. Bartlett and Elwood S. Bartlett by a grant from the State of New Jersey by its deed of conveyance or grant dated the twenty-eighth day of June, nineteen hundred, and recorded in the office of the clerk of the County of Atlantic in Book 248 of Deeds, at page 475. That the lands and premises mortgaged by the said William H. Bartlett and Elwood S. Bartlett and wife, by mortgage dated September eleventh, nineteen hundred and two, are particularly described as follows:

6b. All that certain tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

6c. Beginning in the westerly line of New Hampshire Avenue, two hundred and fifty feet southwardly from the southerly line of Pacific Avenue; thence westwardly parallel with Pacific Avenue one hundred and sixty feet; thence northwardly parallel with New Hampshire Avenue one hundred feet; thence westerly parallel with Pacific Avenue fifteen feet; thence southwardly parallel with New Hampshire and Vermont Avenues two hundred and fifty feet to the northerly line of Oriental Avenue; thence continuing the same course parallel with said New Hampshire and Vermont Avenues and crossing Oriental Avenue to the high water mark of the Atlantic Ocean; thence northeastwardly along the high water mark to the westerly line of New Hampshire Avenue; thence northwardly along

the westerly line of New Hampshire Avenue, recross  
 49 Oriental Avenue to the northerly line thereof; thence  
 along the westerly line of New Hampshire Avenue one hundred and fifty feet to the place of beginning.

Tract No. 2.

6d. Beginning at a point in the high water line of the Atlantic Ocean as the same existed in May, nineteen hundred, said point being distant three hundred and twenty-five feet southwardly at right angles from the southerly line of Pacific Avenue and one hundred and seventy-five feet eastwardly at right angles from the easterly line of Vermont Avenue, and extends thence (1) southwardly parallel with Vermont Avenue and distant one hundred and seventy-five feet eastwardly at right angles from the easterly line the same one hundred and eighty-five feet to a point in the easterly line of lands under water granted by the State of New Jersey to Walter B. Dick, December twenty-eighth, eighteen hundred and ninety-nine; thence (2) southeastwardly in a straight line and along the easterly line of lands as above granted to Walter B. Dick, seven hundred and twenty-nine and thirty-eight one hundredths feet to a point in the exterior line established by the riparian commissioners of the State of New Jersey, said point being distant three hundred and seventy-eight feet northeastwardly along said exterior line from where it is intersected by the easterly line of Vermont Avenue extended southerly; thence (3) northeastwardly along said exterior line curving to the left on a radius of four thousand feet, four hundred and ninety-four feet to a point; thence (4) northwestwardly in a straight line seven hundred and forty-four and thirty-nine hundredths feet to a point in the high water line of the Atlantic Ocean where the same is intersected by the westerly line of New Hampshire Avenue, said point being distant two hundred and fifty feet southwardly from the south line of Pacific Avenue; thence (5) southwestwardly along said high water line to the place of beginning.

50 New Hampshire Avenue, said point being distant two hundred and fifty feet southwardly from the south line of Pacific Avenue; thence (5) southwestwardly along said high water line to the place of beginning.

7. And this defendant denies that the complainants have a title, lien, claim or demand whatsoever upon that portion of the mortgaged premises particularly described in the bill of complaint and more particularly described as follows:

7a. Beginning at the intersection of the easterly line of New Hampshire Avenue with the fourth course in the above description of tract No. 2; thence extending southwardly along the easterly line of New Hampshire Avenue extended to a point in the exterior line established by the riparian commissioners where it is intersected by the easterly line of New Hampshire Avenue extended southwardly; thence eastwardly along said exterior line curving to the left on a radius of four thousand feet to where the said exterior line intersects the fourth course of the said description; thence northwestwardly in a straight line to a point intersecting the easterly line of New Hampshire Avenue, being the place of beginning.

And this defendant humbly prays to be hence dismissed with reasonable costs and charges in this behalf most wrongfully sustained.

WILSON & CARR,  
*Solicitors for Defendant, James W. Northup.*

I consent to the filing of the within answer out of time.

R. H. INGERSOLL,  
*For Complainants.*

EXHIBIT D.

In Chancery of New Jersey.

Between

DEWEY LAND COMPANY and SAMUEL F. NIRDLINGER, Complainants,  
and

HENRY E. STEVENS, JR., and JAMES W. NORTHUP, Defendants.

On Bill, etc.

*Replication.*

The Replication of Dewey Land Company and Samuel F. Nirdlinger, Complainants, to the Answer of Henry E. Stevens, Jr., and James W. Northup, Defendants.

The complainants join issue on the answers of the defendants.

ROBERT H. INGERSOLL,  
*Solicitor for and of Counsel with Dewey Land Co.*  
C. L. GOLDENBERG,  
*Solicitor for and of Counsel with Samuel F. Nirdlinger.*

Service of a copy of within replication is hereby acknowledged this 6th day of September, 1910, and consent is hereby given to file same out of time.

WILSON & CARR,  
*Solicitors for Henry E. Stevens, Jr., and James W. Northup.*



## EXHIBIT E.

In Chancery of New Jersey.

Between

DEWEY LAND COMPANY et al., Complainants,  
and

HENRY E. STEVENS, JR., et al., Defendants.

On Bill, etc.

*Order Dismissing Bill.*

This matter coming on to be heard on the second day of February nineteen hundred and twelve, in the presence of Robert H. Ingersoll and George A. Bourgeois, of counsel with the complainants, and Wilson & Carr, of counsel with the defendants; and the court having heard and considered the proofs, and the arguments of respective counsel; and it appearing to the satisfaction of the court that the complainants are not entitled to any relief whatsoever by reason of the matters and things in their bill of complaint contained and set forth, and that said bill ought to be dismissed with costs;

It is thereupon on this seventh day of September, nineteen hundred and twelve, on motion of Wilson & Carr, solicitors for and counsel with the defendants, Ordered that the complainants' bill of complaint be and the same is hereby dismissed with costs.

And it is further ordered that a fee of one hundred and fifty dollars be and the same is hereby allowed to the solicitors of the defendants, and the same to be taxed as part of the costs of this bill and to be collectible therewith.

E. R. WALKER, C.

## EXHIBIT F.

New Jersey Court of Errors and Appeals.

Between

DEWEY LAND COMPANY et als. (Complainants), Appellants,  
and

HENRY E. STEVENS, JR., et al. (Defendants), Respondents

*Decree of Affirmance and Remittitur.*

This cause having been brought to a hearing on appeal from the Court of Chancery, at the June Term, 1913, of this court, and George A. Bourgeois and Coulomb, of counsel with the appellants, and Wilson & Carr, of counsel with the respondents, having been heard, and

the questions brought up by the said appeal having been duly considered:

It is, on this Fifteenth day of June, nineteen hundred and fourteen, ordered, adjudged and decreed, that the decree of the Court of Chancery made on the seventh day of September, nineteen hundred and twelve, which is appealed from by the appellants, be and the same is hereby in all things affirmed, with costs in this court and the Court of Chancery, to be paid by the appellants, and that the petition of appeal be dismissed.

And it is further ordered, that the record be remitted to the Court of Chancery to proceed further thereon according to law and the practice of said court.

On motion of

WILSON & CARR,  
*Solicitors of Respondents.*

Endorsed: "Filed Jun. 24, 1914. David S. Crater, Clerk."

*Amendment to Answer.*

United States District Court for the District of New Jersey.

Between

SAMUEL F. NIRDLINGER, Complainant,

and

HENRY E. STEVENS, JR., Defendant.

On Bill, &c.

*Amendment to Answer.*

The answer is hereby amended in the following particulars: Paragraph 5d is stricken out and a new paragraph No. 10 is inserted, following the present paragraph 9, and reads as follows:

10. I do further show that the complainant herein is barred from any relief as to the matters and things set forth in the said bill, including all relief therein prayed for, because the said complainant was both a party to and privy in the estate with the complainant in the said suit in the New Jersey Court of Chancery, and that the said decree of the New Jersey Court of Chancery, affirmed by the New Jersey Court of Errors and Appeals, is res judicata of all matters in controversy herein, including the complainant's prayer that:

"The cloud upon the title of your orator to said lands and premises created and occasioned by the alleged riparian grant hereinabove referred to, and the deed of conveyance from William H. Bartlett and Elwood S. Bartlett and wife to the defendant hereinabove referred to may be, so far as said lands and premises are concerned,

declared and decreed to be null and void, and of no effect as against your orator, and that your orator's right in and title to said lands and premises may be decreed to be relieved from the lien or cloud occasioned by said alleged riparian grant and deed of conveyance, and that the said defendant, Henry E. Stevens, Jr., may be likewise decreed to have no title or interest in or to said lands and premises by reason of said alleged riparian grant and deed,"

and that the said decree of the New Jersey Court of Chancery established a title in the defendant herein to the lands particularly described in paragraph 4e, superior to and in exclusion to that of the complainant. And I do further show that the alleged "cloud" upon the title of the complainant is a riparian grant made by the State of New Jersey, and that the said riparian grant was set up by the

56 defendant, in the said suit in the New Jersey Court of Chancery, as the basis of this defendant's title to the lands and premises particularly described in paragraph 4e, and the validity of said riparian grant was therein established, and the complainant's bill was dismissed after a full hearing upon the merits involving the consideration of the present alleged cloud upon the complainant's title.

And I pray that the Court may call up and dispose of the defense of res judicata prior to final hearing.

WILSON & CARR,  
*Attorneys for Defendant.*

We hereby consent to the filing of the within amendment.

BOURGEOIS & COULOMB,  
*Attorneys for Complainant.*

57

*Order.*

United States District Court for the District of New Jersey.

Between

SAMUEL F. NIRDLINGER, Complainant,

and

HENRY E. STEVENS, JR., Defendant.

On Bill, &c.

Order.

It is, on this tenth day of May, A. D. nineteen hundred and fifteen, on motion of Bourgeois & Coulomb, solicitors for and counsel with complainant, Ordered, Adjudged and Decreed that paragraph 7 of the bill of complaint heretofore filed in the above cause be and the same is hereby amended to read as follows:

“7. That the said claim of the said Henry E. Stevens, Jr., of title to, lien upon and interest in said land and premises by reason aforesaid is invalid and void; that the said riparian commissioners had no right to make said grant, and the same is of no effect against your orator; that the said riparian grant, if held valid as against your orator, would violate the constitution of the State of New Jersey and of the United States by appropriating and taking property of your orator without due process of law or payment of any compensation to your orator as the true owner thereof.

Your orator further charges that even if said riparian commissioners of the State of New Jersey, at the time of making said alleged conveyance, had any authority whatsoever to make the same, which your orator denies, said riparian commissioners, notwithstanding, exceeded such authority in the alleged grant aforesaid to the said Henry E. Stevens, Jr., and included therein lands and premises being part of the premises hereinbefore particularly described, the title to the westerly ninety feet of said lands and premises, bounding along New Hampshire Avenue, being in the States Avenue Land Company by virtue of a deed made by the Atlantic City Beach Front Improvement Company to the States Avenue Land Company, dated May twenty-fifth, nineteen hundred and recorded May twenty-eighth, nineteen hundred, in Book 244 of Deeds, page 418, in the office of the clerk of Atlantic County, and the title to the easterly one hundred feet, bounding along the westerly ninety feet of said lands above mentioned and described, being in Charles G. Henderson, Jr., J. Franklin Moss and John C. Hancock, under and by virtue of a deed made by the Atlantic City Beach Front Improvement Company to the said Charles G. Henderson, Jr., J. Franklin Moss and John C. Hancock, dated November first, eighteen hundred and ninety-nine, and recorded November sixth, eighteen hundred and ninety-nine, in Book 237 of Deeds, page 208, in the office of the clerk of Atlantic County, all of whom were predecessors in title of your orator to said lands, and to whose title your orator succeeded by virtue of the deeds above set forth and referred to. And your orator expressly avers and charges that the said riparian commissioners, by virtue of said ownership of the said Charles G. Henderson, Jr., J. Franklin Moss and John C. Hancock and States Avenues Land Company, had no authority or right whatsoever to make the deed to the said William H. Bartlett and Elwood S. Bartlett, above referred to, and said deed is without force and effect as against your orator's title to said lands and premises.”

We consent to the making of the above order.

WILSON & CARR,  
*Solicitors of Defendant.*

*Order to Amend.*

United States District Court for the District of New Jersey.

In Equity.

Between

SAMUEL F. NIRDLINGER, Complainant,

and

HENRY E. STEVENS, JR., Defendant.

*Order to Amend.*

This matter being opened to the Court by Bourgeois and Coulomb, of counsel with complainant.

It is, on this — day of October, 1915, Ordered that complainant's bill of complaint be amended by striking out paragraph 1½ thereof and inserting in place and stead thereof the following:

1½. And your orator further shows unto your Honor that the above described premises are the same premises conveyed to Chalkley S. Leeds et ux. to Robert B. Leeds by deed dated August 2, 1852, duly recorded in the clerk's office of Atlantic County in Book G, pages 1007-1028, as follows:

Beginning on Absecon Beach North  $64\frac{1}{4}$  degrees East 141 chains from the Southeast corner of William Chamberlain by edge of surf and extending thence North  $44\frac{3}{4}$  degrees West 63.60 chains thence North  $13\frac{1}{2}$  degrees East  $23\frac{1}{2}$  chains; thence North 61  $80\frac{1}{4}$  degrees East  $6\frac{1}{2}$  chains; then South  $68\frac{1}{2}$  degrees East 19.30 chains along the inlet; thence South  $32\frac{1}{2}$  degrees East 31.60 chains binding by Absecon Inlet; thence South 14 degrees East  $31\frac{1}{2}$  chains on the same to surf; thence \* \* \*  $64\frac{1}{4}$  degrees West 15.20 chains along the surf to the place of beginning.

And deed between Chalkley S. Leeds, Robert B. Leeds and others dedicating Pacific Avenue, New Hampshire Avenue, Vermont Avenue, Maine Avenue, and other avenues, dated April 15, 1853, recorded in the clerk's office of Atlantic County in Book H, page 177, to

And by Robert B. Leeds, et ux., to John McClees by deed dated July 9, 1856, recorded in the clerk's office of Atlantic County in book I, page 425, as follows:

Beginning in the South edge of Pacific Avenue and in line of Camden and Atlantic Land Company, and extending thence along said Avenue North 67 degrees East 13.35 chains to line of said land company; thence by same South  $44\frac{1}{2}$  degrees East 5.1 chains to edge of Absecon Inlet; thence South  $23\frac{1}{2}$  degrees West 6.7 chains along the edge of said Inlet; thence still along same South 40 de

degrees West 6.7 chains to line of said Land Company; thence along same North 44 degrees West 13.9 chains to the place of beginning.

And by John McClees to the Atlantic City Beach Front Improvement Company by deed dated March 9, 1897, recorded in the clerk's office of Atlantic County in Book 211, page 147, as follows:

Beginning on the Southerly side of Pacific Avenue, 175 feet East of Vermont Avenue, and extending thence East 746 feet, more or less, to line of Camden and Atlantic Land Company; thence South  $44\frac{1}{2}$  degrees East by same 336 feet, more or less, to edge of Absecon Inlet; thence South by high water mark of Absecon Inlet and the Atlantic Ocean 1,024 feet, more or less, to point 175 feet East of Vermont Avenue; thence North parallel with Vermont Avenue 650 feet, more or less, to the place of beginning.

Except the following lot:

Beginning on the West side of New Hampshire Avenue 150 feet South of Pacific Avenue, and extending thence West parallel with Pacific Avenue 150 feet; thence South parallel with New Hampshire Avenue 100 feet; thence East parallel with Pacific Avenue 160 feet to New Hampshire Avenue; thence North by same 100 feet to beginning.

And by Atlantic City Beach Front Improvement Company to Charles G. Henderson, Jr., J. Franklin Moss and John C. Hancock by deed dated November 1, 1899, recorded in the clerk's office of Atlantic County in Book 237, page 208, as follows:

Beginning in the South line of Pacific Avenue, 280 feet East of New Hampshire Avenue, and extending thence East by Pacific Avenue (crossing Main Avenue) to line of land now or late of the Camden and Atlantic Land Company; thence South  $44\frac{1}{2}$  degrees East by said line 336 feet, more or less, to Absecon Inlet or Atlantic Ocean; thence South by high water mark of said Inlet and Ocean to point 90 feet East of New Hampshire Avenue, if extended; thence North, parallel with New Hampshire Avenue (crossing Oriental Avenue 60 feet wide and Dewey Place 50 feet wide) to a point 100 feet South of Pacific Avenue; thence East parallel with Pacific Avenue 190 feet; thence North parallel with New Hampshire Avenue 100 feet to beginning.

And by Atlantic City Beach Front Improvement Company to States Avenue Land Company by deed dated May 24, 1900, recorded in the clerk's office of Atlantic County in Book 244, page 418, as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue and at the Southeast corner of Dewey Place (50 feet wide), and extending thence South along New Hampshire Avenue 160 feet more or less, to high water mark of Atlantic Ocean; thence East by same to point 90 feet East of New Hampshire Avenue; thence North parallel with New Hampshire

Avenue, 160 feet, more or less, to the South line of said Place; thence West by same 90 feet to beginning.

And by Charles G. Henderson, Jr., et ux., et al., to Roland Conrow by deed dated April 14, 1903, recorded in the clerk's office of Atlantic County in Book 287, page 76, as follows:

Beginning in the South line of Pacific Avenue, 280 feet East of New Hampshire Avenue, and extending thence East along Pacific Avenue 120 feet to the West line of Maine Avenue; thence South along same 460 feet, more or less, to high water line of 64 Ocean; thence in line of Maine Avenue extended to high water line of the Ocean as in 1856; thence South along same to point 90 feet East of New Hampshire Avenue, extended; thence North, parallel with same and 90 feet therefrom to the South line of said Place; thence East by same 190 feet; thence North parallel with Maine Avenue crossing said Place 240 feet to beginning.

And by Roland Conrow, et ux., to States Avenue Land Company by deed dated April 14, 1903, recorded in the clerk's office of Atlantic County in Book 286, page 113, as follows:

Beginning in the South line of Dewey Place, 90 feet East of New Hampshire Avenue, and extending thence East along Dewey Place 100 feet by South 350 feet, more or less, to present high water mark in the Atlantic Ocean, and still oceanward to high water mark as it existed in 1856.

And by States Avenue Land Company to Dewey Land Company by deed dated December 19, 1904, recorded in the clerk's office of Atlantic County in Book 313, page 363, as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue, said beginning point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East, parallel, with Pacific Avenue, and along the South line of said place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to high water line of the Atlantic Ocean; thence Southwest along same the several courses and distances thereof to the East line of New Hampshire 65 Avenue; thence North along same 438 feet, more or less, to beginning.

And by Dewey Land Company to Samuel F. Nirdlinger by deed dated December 9, 1907, recorded in the clerk's office of Atlantic County in Book 382, page 19, as follows:

Undivided one-fourth interest in:

Beginning in the East line of New Hampshire Avenue 240 feet South from Pacific Avenue, being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East parallel with Pacific Avenue, along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294



feet, more or less, to high water line of Atlantic Ocean; thence Southwest along same the several courses, &c., to the East line of New Hampshire Avenue; thence North by same 438 feet, more or less, to beginning.

And by Dewey Land Company to Samuel F. Nirdlinger, by deed dated January 20, 1909, recorded in the clerk's office of Atlantic County in Book 395, page 271, conveying an undivided one-twelfth interest, as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from the South line of Pacific Avenue, said point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East parallel with Pacific Avenue and along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to the high water line of the Atlantic Ocean; thence Southwest along said high water line of the Atlantic Ocean the several courses and distances thereof to the Easterly line of New Hampshire Avenue; thence North along the East line of New Hampshire Avenue 438 feet, more or less, to beginning.

And by Dewey Land Company to Samuel F. Nirdlinger, by deed dated February 10, 1909, recorded in the clerk's office of Atlantic County in Book 398, page 116, conveying an undivided one-sixth interest, as follows:

Beginning in the East line of New Hampshire Avenue 240 feet South from the South line of Pacific Avenue, said point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East, parallel with Pacific Avenue and along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to high water line of the Atlantic Ocean; thence Southwest along said high water line of the Atlantic Ocean the several courses thereof to the Easterly line of New Hampshire Avenue; thence North along the East line of New Hampshire Avenue 438 feet, more or less, to beginning.

And by Dewey Land Company to Samuel F. Nirdlinger by deed dated December 3, 1909, recorded in the clerk's office of Atlantic County in Book 107, page 142, conveying an undivided one-half interest as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue, said point being this Southeast corner of New Hampshire Avenue and Dewey Place; thence East parallel with Pacific Avenue and along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 545 feet more or less to the high water line of Atlantic Ocean; thence Southwest along high water line of Atlantic Ocean the several courses and distances thereof to the East line of New Hampshire Avenue; thence North along said line of New Hampshire Avenue 558 feet more or less to beginning.

And by Dewey Land Company to Louis E. Stern by deed dated July 17, 1912, recorded in the clerk's office of Atlantic County in Book 486, page 443, quit-claiming the following:

Beginning at the intersection of the South line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 350 feet, more or less, to high water line of Atlantic Ocean as it existed on April 14th, 1903; thence East at right angles to high water line of the Atlantic Ocean as it existed in 1856, 770 feet, more or less, to said high water line as it then existed; thence Southwest along the high water line of the Atlantic Ocean as — existed in 1856 to point in said high water line where the same would be intersected by the East line of New Hampshire Avenue extended thence North in the East line of New Hampshire Avenue, extended, 1,120 feet, more or less, to beginning.

And by Samuel F. Nirdlinger to Louis E. Stern by deed dated July 17, 1912, recorded in the clerk's office of Atlantic County in Book 486, page 445, as follows:

68 Beginning at the intersection of the South line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 1,120 feet, more or less, to high water line of the Atlantic Ocean, as it existed in 1856; thence Southwest along said high water line to intersection of the East line of New Hampshire Avenue, extended; thence North along the East line of New Hampshire Avenue extended, 1,120 feet, more or less, to beginning.

And by Louis E. Stern to Samuel F. Nirdlinger by deed dated July 17, 1912, recorded in the clerk's office of Atlantic County in Book 486, page 447, conveying an equal undivided one-half interest as follows:

Beginning at the intersection of the South line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East in the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 350 feet, more or less, to high water line of the Atlantic Ocean as it existed on April 14th, 1903; thence East at right angles to high water line of the Atlantic Ocean as it existed in 1856, 770 feet, more or less, to high water line as it then existed; thence Southwest along the high water line of the Atlantic Ocean as it existed in 1856 to point in said high water line where the same would be intersected by the East line of New Hampshire Avenue, extended; thence North in the East line of New Hampshire Avenue, extended, 1,120 feet, more or less, to beginning.

69 And by Louis E. Stern to Dewey Land Company by deed dated July 17, 1912, recorded in the clerk's office of Atlantic County in Book 486, page 450, conveying an undivided one-half interest, as follows:

Beginning at the intersection of the South line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East in the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 350 feet, more or less, to the high water line of the Atlantic Ocean as it existed on April 14th, 1903; thence East at right angles to the high water line of the Atlantic Ocean as it existed in 1856, 770 feet, more or less, to said high water line as it then existed; thence Southwest along the high water line of the Atlantic Ocean as it existed in 1856 to point in said high water line where same would be intersected by the East line of New Hampshire Avenue extended; thence North in the East line of New Hampshire Avenue extended 1,120 feet, more or less, to beginning; a portion of the lands described in the deed from Chalkley S. Leeds to Robert B. Leeds aforesaid having been washed away by the ocean and partly regained by the gradual, imperceptible increase therefrom.

And by Dewey Land Company to Samuel F. Nirdlinger by deed dated February 4, 1914, recorded in the clerk's office of Atlantic County in Book 523, page 47, conveying an undivided one-half interest in the lands last above described.

That your orator shortly subsequent to the time he received the first deed conveying one-fourth thereof in 1907, paid on behalf of himself and the Dewey Land Company, the taxes assessed upon the said premises, and assessment for street improvements abutting thereon, all of which were assessed and levied in the name of the Dewey Land Company and your orator, and the said premises were from time to time improved by grading, filling, curbing and paving, and the erection of jetties for the purpose of protecting same from the inroads of the sea, the cost and expense whereof was paid by your orator, whereby and in consequence whereof the said Dewey Land Company became indebted to your orator in a large sum, until finally on or about the fourth day of February, 1914, in consideration of the said indebtedness and the further sum paid by your orator, the said Dewey Land Company conveyed to your orator its remaining undivided one-half of said premises as hereinabove set forth, whereby your orator became seized and possessed of the whole thereof.

We consent to the making and filing of above amendment.

WILSON & CARR,  
*Solicitors of Defendant.*

*Order.*

United States District Court for the District of New Jersey.

In Equity.

SAMUEL F. NIRDLINGER, Plaintiff,

vs.

HENRY E. STEVENS, JR., Defendant.

*Order.*

It is, on this ninth day of October, on motion of Wilson and Carr, attorneys for the defendant, Ordered that defendant be given leave to file forthwith an answer to the amendment to paragraph 1 of the bill of complaint, which amendment was filed October 9, 1917.

1. I deny that in 1852 the distance between the southerly line of Pacific Avenue and the high water mark of the Atlantic Ocean measured southerly along the line of New Hampshire Avenue, as then and now mapped, was 1,600 feet, and am informed, in such a manner that I believe it to be true, that the high water mark of the Atlantic Ocean, where it crossed New Hampshire Avenue was approximately 350 to 400 feet south of Pacific Avenue. I admit that all lands above such high water mark were high, fast beach lands.

72 I deny that during a succession of severe northeast storms which continued for two or three days and sometimes as long as one week, land was washed and cut away from said high fast beach lands, and I deny that each storm made great inroads thereon of from 75 to 200 feet; and I deny that there were any considerable losses of land due to evulsion and aver that such losses, if any, as occurred from time to time were due to erosion. I admit that there has been a gradual gain by accretion from time to time, and that at the present time the high water mark is far southward of the high water mark in 1900. I deny, however, that by reason of any accretions or otherwise, the plaintiff acquired any title whatever to the lands described in paragraph 4c of the answer.

*Complainant's Answer to Counterclaim.*

United States District Court for the District of New Jersey.

In Equity.

Between

SAMUEL F. NIRDLINGER, Complainant,

and

HENRY E. STEVENS, JR., Defendant.

Complainant's Answer to Counterclaim.

The Answer of the Above-named Complainant to the Counter-claim of Defendant in the Above-stated Cause.

73 In answer to said counter-claim, I, Samuel F. Nirdlinger, say:

1. I deny that this present suit is vexatious and without just cause, and deny that it is intended to unduly annoy and embarrass the said defendant, and deny that defendant's title has been established to the land therein involved by the court of last resort of the State of New Jersey, and deny that my claim is an unfounded claim, and say that defendant gained no title by virtue of the riparian grant on which he relies, and further say that the State of New Jersey was without power to make a grant of the lands claimed by me in my bill of complaint, title to which lands was derived by me through the following instruments:

Deed from Chalkley S. Leeds, et ux., to Robert B. Leeds dated August 25, 1852, duly recorded in the clerk's office of Atlantic County in Book G, pages 1007-1028, as follows:

Beginning on Absecon Beach North  $64\frac{1}{4}$  degrees East 14.10 chains from the Southeast corner of William Chamberlain by edge of surf, and extending thence North  $44\frac{3}{4}$  degrees West 63.60 chains; thence North  $13\frac{1}{2}$  degrees East  $23\frac{1}{2}$  chains; thence North  $80\frac{1}{4}$  degrees East  $6\frac{1}{2}$  chains; thence South  $68\frac{1}{2}$  degrees East 19.30 chains along the inlet; thence South  $32\frac{1}{2}$  degrees East 31.60 chains *binding* by Absecon Inlet; thence South 14 degrees East  $31\frac{1}{2}$  chains on the same surf; thence— $64\frac{1}{4}$  degrees West 15.20 chains along the surf to the place of beginning.

Deed between Chalkley S. Leeds, Robert B. Leeds and others, dedicating Pacific Avenue, New Hampshire Avenue, Vermont Avenue, Maine Avenue, and other avenues, dated April 15, 1853, recorded in the clerk's office of Atlantic County in Book H, page 177, &c.

Deed from Robert B. Leeds, et ux., to John McClees dated Jan 9, 1856, recorded in the clerk's office of Atlantic County in Book page 425, as follows:

Beginning in the South edge of Pacific Avenue and in line of Camden and Atlantic Land Company, and extending thence along said Avenue North 67 degrees East 13.35 chains to line of said Land Company; thence by same South  $44\frac{1}{2}$  degrees East 5.1 chains to edge of Absecon Inlet; thence South  $23\frac{1}{2}$  degrees West 6.7 chains along the edge of said Inlet; thence still along same South 40 degrees West 6.7 chains to line of said Land Company; thence along same North 44 degrees West 13.9 chains to the place of beginning.

Deed from John McClees to the Atlantic City Beach Front Improvement Company, dated March 9, 1897, recorded in the clerk's office of Atlantic County in Book 211, page 147, as follows:

Beginning on the Southerly side of Pacific Avenue, 175 feet East of Vermont Avenue, and extending thence East 746 feet more or less, to line of Camden and Atlantic Land Company; thence South  $44\frac{1}{2}$  degrees East by same 336 feet, more or less, to edge of Absecon Inlet; thence South by high water mark of Absecon Inlet and the Atlantic Ocean 1,024 feet, more or less, to point 175 feet East of Vermont Avenue; thence North parallel with Vermont Avenue 67 feet, more or less to the place of beginning.

75 Except the following lot:

Beginning on the West side of New Hampshire Avenue 150 feet South of Pacific Avenue, and extending thence West parallel with Pacific Avenue 160 feet; thence South parallel with New Hampshire Avenue 100 feet; thence East parallel with Pacific Avenue 160 feet to New Hampshire Avenue; thence North by same 100 feet to beginning.

Deed from Atlantic City Beach Front Improvement Company to Charles G. Henderson, Jr., J. Franklin Moss and John C. Hancock dated November 1, 1899, recorded in the clerk's office of Atlantic County in Book 237, page 208, as follows:

Beginning in the South line of Pacific Avenue, 280 feet East of New Hampshire Avenue, and extending thence East by Pacific Avenue (crossing Maine Avenue) to line of land now or late of the Camden and Atlantic Land Company; thence South  $44\frac{1}{2}$  degrees East by said line 336 feet, more or less, to Absecon Inlet or Atlantic Ocean; thence South by high water mark of said Inlet and Ocean to point 90 feet East of New Hampshire Avenue, if extended; thence North, parallel with New Hampshire Avenue (crossing Oriental Avenue 60 feet wide and Dewey Place 50 feet wide) to a point 10 feet South of Pacific Avenue; thence East parallel with Pacific Avenue 190 feet; thence North parallel with New Hampshire Avenue 100 feet to beginning.

Deed from Atlantic City Beach Front Improvement Company to States Avenue Land Company dated May 24, 1900, recorded in the clerk's office of Atlantic County in Book 244, page 418, as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue and at the Southeast corner of Dewey Place (50 feet wide), and extending thence South along New Hampshire Avenue 160 feet more or less, to high water mark of Atlantic Ocean; thence East by same to point 90 feet East of New Hampshire Avenue; thence North parallel with New Hampshire Avenue, 160 feet, more or less to the South line of said Place; thence West by same 90 feet to beginning.

Deed from Charles G. Henderson, Jr., et ux., et al., to Roland Conrow, dated April 14, 1903, recorded in the clerk's office of Atlantic County in Book 287, page 76, as follows:

Beginning in the South line of Pacific Avenue, 280 feet East of New Hampshire Avenue, and extending thence East along Pacific Avenue 120 feet to the West line of Maine Avenue; thence South along same 460 feet, more or less, to high water line of Ocean; thence in line of Maine Avenue extended to high water line of the Ocean as in 1856; thence South along same to point 90 feet East of New Hampshire Avenue, extended; thence North, parallel with same and 90 feet therefrom to the South line of said Place; thence East by same 190 feet; thence North parallel with Maine Avenue crossing said Place 240 feet to beginning.

Deed from Roland Conrow, et ux., to States Avenue Land Company, dated April 14, 1903, recorded in the clerk's office of Atlantic County in Book 286, page 113, as follows:

Beginning in the South line of Dewey Place, 90 feet East of New Hampshire Avenue, and extending thence East along Dewey Place 100 feet by South 350 feet, more or less, to present high water mark in the Atlantic Ocean, and still oceanward to high water mark as it existed in 1856.

Deed from States Avenue Land Company to Dewey Land Company, dated December 19, 1904, recorded in the clerk's office of Atlantic County in Book 313, page 363, as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue, said beginning point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East, parallel with Pacific Avenue, and along the South line of said place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to high water line of the Atlantic Ocean; thence Southwest along same the several courses and distances thereof to the East line of New Hampshire Avenue; thence North along same 438 feet, more or less, to beginning.



Deed from Dewey Land Company to Samuel F. Nirdlinger, dated December 9, 1907, recorded in the clerk's office of Atlantic County in Book 382, page 19, as follows:

Undivided one-fourth interest in the following:

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue, being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East, parallel with Pacific Avenue, along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to high water line of Atlantic Ocean; thence Southwest along same the several courses &c., to the East line of New Hampshire Avenue; thence North to same 438 feet, more or less, to beginning.

Deed from Dewey Land Company to Samuel F. Nirdlinger, dated January 20, 1909, recorded in the clerk's office of Atlantic County in Book 395, page 271, conveying an undivided one-twelfth interest as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from the South line of Pacific Avenue, said point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East parallel with Pacific Avenue and along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to the high water line of the Atlantic Ocean; thence Southwest along said high water line of the Atlantic Ocean the several courses and distances thereof to the Easterly line of New Hampshire Avenue; thence North along the East line of New Hampshire Avenue 438 feet, more or less, to beginning.

Deed from Dewey Land Company to Samuel F. Nirdlinger, dated February 10, 1908, recorded in the clerk's office of Atlantic County in Book 398, page 116, conveying an undivided one-sixth interest as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from the South line of Pacific Avenue, said point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East, parallel with Pacific Avenue and along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to high water line of the Atlantic Ocean; thence Southwest along said high water line of the Atlantic Ocean the several courses thereof to the Easterly line of New Hampshire Avenue; thence North along the East line of New Hampshire Avenue 438 feet, more or less, to beginning.

Deed from Dewey Land Company to Samuel F. Nirdlinger, dated December 3, 1909, recorded in the clerk's office of Atlantic County in Book 107, page 142, conveying an undivided one-half interest as follows:

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue, said point being the Southeast corner of New Hampshire Avenue and Dewey Place; thence East parallel with Pacific Avenue and along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 545 feet more or less to the high water line of Atlantic Ocean; thence Southwest along high water line of Atlantic Ocean the several courses and distances thereof to the East line of New Hampshire Avenue; thence North along said line of New Hampshire Avenue 558 feet more or less to beginning.

Quit-claim deed from Dewey Land Company to Louis E. Stern, dated July 17, 1912, recorded in the clerk's office of Atlantic County in Book 486, page 443, as follows:

Beginning at the intersection of the south line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 350 feet, more or less, to high water line of Atlantic Ocean as it existed on April 14th, 1903; thence East at right angles to high water line of the Atlantic Ocean as it existed in 1856, 770 feet, more or less, to said high water line as it then existed; thence Southwest along the high water line of the Atlantic Ocean as existed in 1856 to point in said high water line where the same would be intersected by the East line of New Hampshire Avenue extended thence North in the East line of New Hampshire Avenue, extended 1,120 feet, more or less, to beginning.

Deed from Samuel F. Nirdlinger to Louis E. Stern, dated July 17, 1912, recorded in the clerk's office of Atlantic County in Book 486, page 445, as follows:

Beginning at the intersection of the South line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 1,120 feet, more or less, to high water line of the Atlantic Ocean, as it existed in 1856; thence Southwest along said high water line to intersection of the East line of New Hampshire Avenue extended; thence North along the East line of New Hampshire Avenue extended, 1,120 feet, more or less, to beginning.

Deed from Louis E. Stern to Samuel F. Nirdlinger, dated July 17, 1912, recorded in the clerk's office of Atlantic County in Book 486, page 447, conveying an equal undivided one-half interest, as follows:

Beginning at the intersection of the South line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East in the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 350 feet, more or less, to high water line of the Atlantic Ocean as it existed on April 14th, 1903; thence East at right angles to high water line of the Atlantic Ocean

as it existed in 1856, 770 feet, more or less, to high water line as then existed; thence Southwest along the high water line of the Atlantic Ocean as it existed in 1856 to point in said high water line where the same would be intersected by the East line of New Hampshire Avenue extended; thence North in the East line of New Hampshire Avenue, extended, 1,120 feet, more or less, to beginning

Deed from Louis E. Stern to Dewey Land Company dated July 17, 1912, recorded in the clerk's office of Atlantic County in Book 486, page 450, conveying an undivided one-half interest, as follows:

Beginning at the intersection of the South line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East in the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 350 feet, more or less, to the high

water line of the Atlantic Ocean as it existed on April 14, 182

1903; thence East at right angles to the high water line of the Atlantic Ocean as it existed in 1856, 770 feet, more or less, to said high water line as it then existed; thence Southwest along the high water line of the Atlantic Ocean as it existed in 1856 to point in said high water line where same would be intersected by the East line of New Hampshire Avenue extended; thence North in the East line of New Hampshire Avenue extended 1,120 feet, more or less, to beginning; a portion of the lands described in the deed from Chalkley S. Leeds to Robert B. Leeds aforesaid having been washed away by the ocean and partly regained by the gradual imperceptible increase therefrom.

And deed from Dewey Land Company to Samuel F. Nirdlinger dated February 4, 1914, recorded in the clerk's office of Atlantic County in Book 523, page 47, conveying an undivided one-half interest in the lands last above described.

BOURGEOIS & COULOMB,  
*Solicitors for Complainant.*

We consent to the filing of within answer to counter-claim.

WILSON & CARR,  
*Solicitors of Defendant.*

*Order.*

United States District Court for the District of New Jersey.

In Equity.

SAMUEL F. NIRDLINGER, Plaintiff,

vs.

HENRY E. STEVENS, JR., Defendant.

*Order.*

It appearing that since the argument of the above stated cause, to wit, on or about the 13th day of November, A. D. 1918, Samuel F. Nirdlinger departed this life testate, and that Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance and Trust Company of Philadelphia, by his last will and testament thereby became seized of the lands and premises of which the said Samuel F. Nirdlinger was seized at the time of his death;

It is, on this — day of —, A. D. 1920, Ordered that the said Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance and Trust Company of Philadelphia be and hereby are substituted as parties plaintiffs for and in the place of Samuel F. Nirdlinger, deceased.

We consent to the making of the above order.

\_\_\_\_\_,  
*Attorneys for Defendant.*

*Order Amending Bill.*

United States District Court for the District of New Jersey.

In Equity.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, and REAL ESTATE TITLE Insurance and Trust Company of Philadelphia, Executors and Trustees under the Will of Samuel F. Nirdlinger, Deceased, Plaintiffs,

vs.

HENRY E. STEVENS, JR., Defendant.

*Order Amending Bill.*

It is, on the — day of —, A. D. 1920, Ordered that the description contained in paragraph 1 of plaintiffs' bill be amended to read as follows:

Beginning at a point in the Easterly line of New Hampshire Avenue, 240 feet Southwesterly from Pacific Avenue, said point be-

ing the Southeasterly corner of New Hampshire Avenue and Dewey  
Place, thence extending Eastwardly, parallel with Park  
85 Avenue and along the Southerly line of Dewey Place 100  
feet; thence (2) Southwardly, parallel with New Hampshire  
Avenue, to the present high water line of the Atlantic Ocean, to wit,  
442 feet more or less; thence (3) Southwestly, along the present high  
water line of the Atlantic Ocean to the Easterly line of New Hampshire  
Avenue extended; thence (4) Northwardly, along said line of  
New Hampshire Avenue to the place of beginning, to wit, 577 feet  
more or less.

---

Judge

We consent to the making of the above amendment.

---

Attorneys of Defendant

86

*Testimony.*

United States District Court, District of New Jersey.

In Equity.

SAMUEL F. NIRDLINGER, Plaintiff,  
against

HENRY E. STEVENS, JR., Defendant.

*Testimony.*

Testimony Taken Before the Hon. Thomas G. Haight, at the Post  
Office Building, in Trenton, N. J., in October 9, 1917.

Appearances:

Bourgeois and Coulomb and Hon. Robert H. McCarter, for the  
plaintiff.

Harvey S. Carr, for the defendant.

Mr. Carr: The defendant admits the jurisdictional fact of diversity  
of citizenship and peaceable possession of the complainant.

Mr. Bourgeois: Admits that we are in peaceable possession and  
that no suit is pending?

87 Mr. Carr: Yes, except this suit of course; no other suits  
pending.

Defendant's counsel offers in evidence the bill of complaint  
amended bill, answer of Henry E. Stevens, Jr., answer of James V.  
Northrup and replication, memorandum of Chancellor Walker, order  
dismissing bill, notice of appeal and petition of appeal in the suit  
instituted in the Court of Chancery in New Jersey wherein Dewey Lumber  
Company, et al., was complainant and Henry E. Stevens and others

were defendants, and it is stipulated between counsel that the copies of the papers before mentioned, which appear in the printed State of the Case used in that cause in the Court of Errors and Appeals of New Jersey may be used in lieu of certified or other official copies.

(The book is received in evidence and marked Exhibit D1.)

(Defendant's counsel offers in evidence decree of affirmance and remittitur of the Court of Errors and Appeals of New Jersey in the case of the Dewey Land Company, et al., against Henry E. Stevens, Jr., said offer being in the form of a copy thereof annexed to the defendant's answer and admitted by consent.)

(Defendant's counsel offers in evidence the two opinions of the Court of Errors and Appeals to be found in 83 New Jersey Equity, 314 and 656.)

Mr. Carr: There is no dispute that the common title was in the Atlantic Beach Front Improvement Company, is there, Mr. Bourgeois?

Mr. Bourgeois: I think we will admit that.

88 Mr. Carr: That both the complainant and the defendant derived their title from the Atlantic Beach Front Improvement Company.

Mr. Bourgeois: The title to the upland.

Mr. Carr: Yes. The Atlantic Beach Front Improvement Company derived its title from John McClean by deed dated March 9, 1897, recorded on March 15, 1897, in Book 211 of Deeds at page 174. The Atlantic Beach Front Improvement Company by deed dated November 9, 1899, and recorded November 13, 1899, in Book 238 of Deeds 204 conveyed to William H. Burkard the premises therein described, the abstract of which conveyance, made by the West Jersey Title & Guarantee Company is by consent used in evidence and marked D2.

(Defendant's counsel offers in evidence a conveyance by the Atlantic Beach Front Improvement Company to William H. Burkard by deed dated November 9, 1899, recorded in Book 240 of Deeds at page 99, abstract of which conveyance is offered in evidence and received and marked Exhibit D3.)

(Defendant's counsel offers in evidence conveyance from William H. Burkard and Mary L., his wife, to William H. Bartlett and Elizabeth, his wife, dated November 9, 1899, recorded November 29, 1899, in Book 237 of Deeds, page 387 abstract of which conveyance is offered in evidence, received and marked Exhibit D4.)

(Defendant's counsel offers in evidence a certified copy of an application to the riparian commission made by William H. Bartlett and Elwood S. Bartlett by Thompson & Cole, attorneys, dated the 30th day of April, 1900, certified by Johnson C. Payne, formerly secretary and engineer of the riparian commission. Received and marked Exhibit D5.)

(Defendant's counsel offers in evidence certified copy of the deed from the State of New Jersey to William H. Bartlett and Elwood S.

Bartlett dated June 28, 1900, being a riparian grant and constituting a part of the locus in quo. Received and marked Exhibit D6.)

(Defendant's counsel offers in evidence original of the deed of conveyance made by William H. Bartlett, single and Elwood S. Bartlett and Ellen L., his wife, to Henry E. Stevens, Jr., dated April 25, 1905, recorded May 6, 1905 in Book 316 of Deeds at page 487 Atlantic County conveying the locus in quo with other lands. Received and marked Exhibit D7.)

JOHN P. ASHMEAD, called and sworn on behalf of the defendant testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Ashmead, you are a surveyor and engineer, are you not?

A. I am.

Q. And were you at one time a member of the firm of Ashmead & Hackney?

A. I was.

Q. Where did that firm do business?

90 A. Atlantic City, Atlantic County.

Q. How many years did they do business down there?

A. Twenty-five years I guess, twenty or twenty-five years.

Q. How long have you been an engineer?

A. About thirty-five years.

Q. And how long have you been familiar with the beach front conditions in Atlantic City?

A. About thirty-five years.

Q. I show you a blue print map marked map of premises situated in Atlantic City made October, 1917, by John P. Ashmead, civil engineer and I ask you whether you prepared this map?

A. I did the original of which this a blue print.

Q. Now does it correctly delineate the conditions of the street line in Atlantic City?

A. It does.

Q. And of the high water mark at various dates?

A. It does.

Q. And are those dates indicated on the map?

A. They are.

Q. And does it correctly show the lines of the riparian grants from the State of New Jersey to Bartlett, from the State of New Jersey to Henderson and from the State of New Jersey to McPherson?

A. It does.

The Witness (aside): That figure had better be changed on those other maps.

Q. Oh, yes. I call your attention to the lot of Jonah Wootton. I note that the last figure has been changed in lead pencil to 8, making it read 1858?

A. 1858 instead of 1854.



Q. And all copies corrected accordingly?

A. Yes.

91 Q. Now does this show the line established by the riparian commissioners?

A. It does.

Q. Can you point out to his Honor the tract of land embraced in the deed from *the* Bartlett to Stevens, Exhibit D7? Suppose as I read the description you follow it for the Court's information. "Beginning in the westerly line of New Hampshire Ave. 250 feet southward from the southerly line of Pacific." Will you indicate for his Honor the position of that point?

(Witness indicates.)

Q. (Continuing:) "Thence westerly parallel with Pacific Ave. 160 feet; thence northerly and parallel with New Hampshire Ave. 190 feet; thence westerly parallel with Pacific Ave. 15 feet; thence southerly parallel with New Hampshire and Vermont Avenues 250 feet to the northerly line of Oriental Avenue; thence continuing same course parallel with said New Hampshire and Vermont Avenue and crossing Oriental Avenue at high water line to the exterior line of the Riparian Commissioners; thence along the said exterior line curving to the left with a radius of four thousand six hundred and seventy feet more or less to the easterly line of a grant made by the State of New Jersey by the Government and Riparian Commissioners to William H. Bartlett and Elwood S. Bartlett."

Mr. McCarter: That seems to be 494 by this map.

A. I don't understand where the six hundred and some feet is that you read there.

92 The Court: Then this 494 should be 670, shouldn't it?

Mr. Carr: No, 494 is along the exterior line.

The Court: Now where does the 670 come in?

The Witness: 670 more or less it says, but it is a mistake.

The Court: 494; well then at any rate the property covered by the deed from Bartlett to Stevens is this property which you have just delineated on the map and which I will mark A, is that right?

The Witness: Yes, sir.

The Court: Have you offered this map in evidence?

Mr. Carr: Yes, I offer the map.

(Received and marked Exhibit D8.)

The Court: Now I have marked the property which the witness has just shown as embraced within the description of the deed as A.

Q. Now Mr. Ashmead, are you familiar with the Atlantic City dedication map?

A. I am.

Q. The blue print map which I now show and which is marked "Map of Absecon Beach bounding on Atlantic Ocean, Survey No-

venber 1852 by J. L. Rowand, Surveyor." Is that a copy of the Atlantic dedication map?

93 A. That is a true copy.

Q. Made by you?

A. It was partly made by me, and part by my assistant, that is the tracing was traced by myself and one of my assistants—

Mr. Carr: I offer the map.

A. (Continuing:) From the map on file in the county clerk's office, Atlantic County.

The Court: That is, the original is?

The Witness: Yes.

The Court: You did not make the map in the first instance?

The Witness: No, Rowand made the map.

Mr. Carr: We both want it to go in.

(Map received and marked Exhibit D9.)

Q. Mr. Ashmead, the irregular lines at the south of the map will you say how they are described on the map itself?

A. The line along the beach is intended to represent low water.

Q. So that the line to which I am now pointing is intended to represent the low water mark?

A. Low water mark as surveyed in 1852.

The Court: The line to which Mr. Carter points is a number of irregular lines at the top of the map.

Q. I call your attention to the word strand appearing  
94 upon the map and covering portions of blocks 95, 96, 97, 98 and also the same word covering a portion of blocks 119 and 120 and I ask you what that space represents?

A. That space represents the land between the line marked on this map, line of the outside sand hills and the line representing the low water mark.

Q. What does the word strand mean?

A. It means the line between high and low water I should take it.

Q. Now the line of the outside sand hills coupled with the use of the word strand, does that indicate to you—

(Objected to.)

Q. (Continuing:) What the map is intended to represent in the way of a high water mark?

A. Yes, I think the high water mark is the line of the outside sand hills or very near it, and of course the low water line is represented by this mark and the word strand is between these two lines.

Q. That is the space between the low and the high water mark?

A. That's what I should say it was as represented on that map.

Mr. McCarter: May I ascertain where he puts the low water mark on that?

The Court: It is marked there Mr. McCarter, the words themselves are on there. Now then he says the line marked line of the outside sand hills in the high water mark and that therefore the intervening space which is marked strand, seems to be all the way up the map, indicates the line lying between high and low water mark.

95 Q. Now M. Ashmead, on the map Exhibit D8, did you indicate in any way the position of the line of the outside sand hills shown on the Rowand map Exhibit D9?

A. I did. It is the dash line and marked line of the outside sand hills as shown on Rowand map 1852.

The Court: The Rowand map is D9?

The Witness: Yes, that's this one.

Recess.

#### Afternoon Session.

Mr. ASHMEAD resumed.

Direct examination.

Continued by Mr. Carr:

Mr. Carr: If the Court please I offer in evidence copy of a map made by The United States Coast and Geodetic Survey, surveyed in 1863 and 1864 for the purpose of showing the ocean front at Atlantic City at that time.

Mr. Bourgeois: That is objected to because of improper proof, in other words that does not prove itself. In another case in which I was interested I had occasion to examine the geodetic people with regard to the making of those maps. You will notice the scale is 10,000 feet to the inch.

The Witness: No, that is not what that means, it is 833 feet to the inch.

96 Mr. Bourgeois: It developed in that case you could not tell anything about the map, that actual measurements showed that the width of a line would mean many, many feet and the shrinkage of paper and all those things entered into the distances. Having that in mind I object to it.

Mr. Carr: That will only go to the force and effect and credit to be given to the map itself. It is made by governmental agency and under the cases the Court will take judicial notice of it as a record prepared by an administrative bureau or agency of the government. It undoubtedly is far more accurate than the recollection of witnesses. Even traditionary evidence is received in the case of ancient boundaries. The great difficulty of course is to find living witnesses who can testify as to conditions that far back, for that reason the Court permits even traditionary evidence to go in, which of course is hearsay evidence. It also permits the Court to take judicial maps prepared by governmental agencies and this is such

a map. The only thing required of a Court to take judicial notice is to satisfy itself of the authenticity of the paper submitted.

The Court: I think I will accept the map subject to objection and pass upon its force and effect hereafter, provided there is no objection to a photographic copy, as it purports to be.

Mr. Bourgeois: We don't know where that comes from at all. It is simply a photograph of something, it may be a photographic copy.

Mr. Carr: It was furnished to us by The United States Geodetic Survey as a copy of the official map on their files.

If the Court please if objection is made to the lack of certification I will furnish certificates. I do not think it is necessary because under the cases the Courts take judicial notice of official maps if the Court itself is satisfied that it came from the proper agency, as we take judicial notice of laws of other states.

The Court: The point is there ought to be more proof identifying it and showing exactly what it is and so forth. It amounts to nothing Mr. Carr, without explanation, merely this witness' interpretation of a map made by someone else, if he attempts to interpret it.

Mr. Carr: I am not asking him to interpret it because the map seems to interpret itself except as his skill as a surveyor enables him to make more clear what is not clear, at least to me. The maps were furnished to me at my request by this bureau of the government. I would like to offer them and have the Court receive them subject to later certification, such certification as is necessary, I really think it is helpful to the Court.

The Court: I think you ought to produce the best evidence that you can from the archives at Washington as to how they were made and so forth so that we can in some way determine whether or not they are of any weight and whether they should be given any weight in this controversy between two private individuals. Now I have no doubt that the field books or notes made by an officer of the government in the discharge of his duties would prove themselves by simply proving that they were made by a man who

was the official surveyor or what not, and those notes in connection with the map might make them a very substantial and important piece of evidence. But the maps standing by themselves without anything else to explain them do not seem to me to carry any force or effect whatever. Why not let the map be admitted for the purpose of letting Mr.—no, the map need not necessarily be admitted, he can testify that the marks that he has made on this Exhibit D8 was the line which he took on such and such a map and that explains this particular line and then to have that map of any probative force it would have to be in some way substantially explained, probably explained rather than substantiated, because it may be as Mr. Bourgeois says that this map was made in such a way that it would be of no probative force, that it was merely for the purpose of soundings, or something or another of that kind, and if I admit the map it does not seem to me it would have any weight at all.

Mr. Carr: I would like to make the offer of the maps if your Honor will receive them pending further argument.

The Court: You may make the offer of the maps, but I think before they can be given any weight you will have to have them explained in some proper way. It might be that the explanation will be found right in the law as to the purposes for which they were made and everything of that kind, but it is going to be a very difficult matter to search that out of the law and find it, and I think the far better procedure would be to bring somebody from Washington here and let him explain them, bring the field notes at the same time and then we can determine exactly what weight is to be given to them irrespective of the question of competency.

Mr. Carr: Well I make the offer now. I will ask that they at least be marked for identification.

(Maps marked Exhibit D10 for identification.)

Mr. Carr: I also offer in evidence United States Geodetic Survey Maps made in 1869 and 1870 showing the beach front at Atlantic City.

Mr. Bourgeois: That is objected to for the same reason.

The Court: Same disposition as before.

Mr. Carr: I understand your Honor does not rule them out at this time, they are held subject to further proof of authentication.

The Court: I receive them at this time merely so the witness now on the stand can testify regarding some data on his map which is taken from those maps, but will not admit them for any other purpose at the present time, at least until there is further proof showing the circumstances under which they were made, and so forth.

(Map marked Exhibit D11 for identification.)

Q. I show you Exhibit D10 for identification, being a geodetic survey map and ask you whether or not you indicated any of the lines from that map on Exhibit D8?

A. I did.

100 Q. What line did you indicate on Exhibit D8 taken from Exhibit D10 for identification?

A. "High water line 1863-1864 U. S. Coast & Geodetic Survey."

Q. Did you find a high water mark on the geodetic survey map, Exhibit D10 for identification?

A. I did.

Q. And did you delineate it in its correct position upon Exhibit D8?

A. I did.

The Court: What did you take in D10 as the high water mark, what line?

The Witness: Solid line inside of the dotted line as shown upon this map.

The Court: The dotted line?

The Witness: The dotted line is the low water line.

The Court: The extreme low water line and the solid line is what you consider high water line?

The Witness: The solid line is what I consider to be the high water line and the dash line is the outside row of sand hills.

Q. Now will you kindly look at Exhibit D11 for identification and state whether or not you portrayed any line thereon, on Exhibit D8?

A. I did.

Q. What line did you indicate on——

A. "High water line 1869-1870 Coast & Geo. Sur."

Q. Now will you state how far the high water line as indicated on the geodetic map, the high water line of 1863 and '64  
101 south of Pacific Avenue along the line of New Hampshire Avenue?

A. About 50 feet, 45 feet.

The Court: 45 feet at its narrowest?

The Witness: Along the west line of New Hampshire Avenue.

Q. Now will you also state how far south of Pacific Avenue along the west line of New Hampshire Avenue the line of outside sand hills is distant from Pacific Avenue?

A. 280 feet.

Q. And do you fix that as the high water mark of 1852, as you interpret the Rowand map?

A. I do.

Q. Do you know whether the grant made by the state to Bartlett evidenced by Exhibit D6 joined the land of Bartlett as shown on your blue print map?

A. It did, went up to the high water line May 1900.

Q. That's all. Cross-examine.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Ashmead, is any part of the land covered by the riparian grant to Bartlett narrow, high fast land?

A. It is.

Q. How far down can you indicate on that map where the high water line is at the present time?

A. I can, if you will let me have the map I made for you.

102 Mr. Carr: Now at this point does he become your witness?

Mr. Bourgeois: No, I am cross-examining him as to your map only he wants to borrow the map he made for me.

A. Now, on the east line of New Hampshire, will that do?

Q. Yes, or west line either, I don't care which. Maybe we had better have the west line.

A. West line would be about thirty or forty feet. On the east line it is 880 feet.

The Court: On the west line of New Hampshire?

The Witness: On the east line.

Q. West line I want from wherever the grant commenced.

A. 250 feet.

Q. I want to know how far from that point—I want you to locate on this map the high water line, I don't care whether you go from Pacific Avenue or where you begin.

(Witness indicates.)

The Court: It is the point where you have marked the X and which we will call "B, high water line October 6, 1917."

Q. Now measure and indicate on the map about where the high water line is distant from the intersection of the easterly boundary of the Bartlett grant to the intersection of the westerly line of New Hampshire Avenue.

108 (Witness indicates.)

Q. Now the high water line between those two points is practically straight, isn't it?

A. Yes.

Q. Won't you draw a line connecting the two by your rule there?

The Court: The witness indicates by a line placed on the map marked "C."

Q. Then that portion of the riparian grant enclosed by the triangle, having for its westerly boundary the westerly side of New Hampshire Avenue for its southerly boundary the high water mark, and for its easterly boundary the last course, I think it is in the Bartlett grant, running from the exterior line up to the intersection of New Hampshire Avenue, is now high fast land?

A. Yes, that's high land, it is all above high water, ordinary high water.

Q. And it has been how many years in accumulating, when was this grant made?

A. 1900 I think.

Q. You made the survey 1900 and what?

A. 1917.

Q. And in those seventeen years that beach is made up there that far?

A. Yes.

The Court: That is that whole triangle of hard, fast upland had been made in the last seventeen years?

The Witness: Yes.

104 The Court: Let me ask you one question. You have indicated on this map high water line at different dates. In addition to this, you have already testified about the high water mark 1863, the high water mark 1869 and the high water mark 1852. Where did you get the information on which you made these statements on the map?



The Witness: Got them from a map of survey that I made according to the dates shown on that map.

The Court: And these correctly set forth the high water mark the time specified thereon?

The Witness: It does.

Mr. Bourgeois: Except only as the geodetic survey and this demarcation line.

The Witness: Except those three.

The Court: And all the others?

The Witness: All the others I made the surveys myself.

The Court: Passed on your personal knowledge?

The Witness: Yes, sir.

Q. Now, Mr. Ashmead, will you go to the other side of the Judge's map, please, and let me ask you a question about the other map. You see some diagonal lines running in a southeasterly direction on the Atlantic City dedication map, D9, extending from, well some of them far up as Adriatic Avenue, almost to the ocean?

105 A. Yes, sir.

Q. What do these lines indicate?

A. Those represent the division of the estate of Jeremiah Leeds; there may be some others there.

— There are some others, aren't there?

A. I think so.

Q. Neely, Leeds, Dowdy and Pitney, McManus.

A. It has been divided up.

Q. In other words those are the—

A. The original lines of the Jeremiah Leeds division.

Q. Now did you ever see the original map from which the map in the clerk's office was made, to know whether or not the street system is on it?

A. See the original map?

Q. That's the one in the clerk's office?

A. The one this was taken from.

Q. Did you ever see the one made before that, the one made by Rowand?

A. This is the one made by Rowand.

Q. I understood that Rowand made the map and Osborne put the street system on.

A. I could not say as to that, it is signed Rowand, same as on the map, it says it is made by Rowand, that's all I know about it.

Q. What I had in mind was this. I wanted to ascertain if they were the property lines and if they corresponded or did not correspond with the street system, that is as to direction. I understood you to say they are the property lines.

A. They are the property lines.

Q. They do not correspond as to direction with the street?

A. They don't run the same direction as the streets, no, but the street system of course, I don't know when it was laid out, but this map was made, it says, in—

106 Q. 1852.

A. Shows when it was made by Rowand there.

Q. When was it made, 1852?

A. 1852.

Q. And filed in 1854?

A. No, it was filed in '84 I think.

Q. '54?

A. No, I think it was '84 or '81.

The Court (reads): "Received May 23, 1854, recorded in clerk's  
office of Atlantic County. Filed in clerk's office Atlantic County,  
October 24, 1882."

Q. Now, Mr. Ashmead, I understood you to testify that the inner  
line at the point of the beach was the water line of the sand hills, is  
that correct?

A. The inner line?

Q. Yes; first was the edge of the water the low water mark?

The Court: What he testified to was the low water mark, the out-  
side of the sand hills was the high water mark.

Q. That's what I wanted to ask him.

A. Of course, there is another line there.

Q. No, the one marked "Outside of sand hills," why do you say  
that was the line of the high water mark?

A. Because at that time, at that place the high water line must  
have been the outside row of sand hills, because the beach was wash-  
ing away.

Q. Why do you say it must have?

A. Because it is always the case when the beach is washing away.

Q. Have you any knowledge that the beach was washing away in  
1852?

A. Yes.

Q. What knowledge have you?

A. These different surveys.

Q. They are made afterwards, they are made 1869? In 1869-

A. Now what leads you to believe that the ocean was making in  
1852?

A. Because afterwards it was very many feet, that is several hun-  
dred feet further in.

Q. I know, but that does not indicate it was making in then, it  
may have been making out at that time. Our beaches do wash in  
and out, don't they?

A. Another reason there was about the same distance shown on  
the map as you find between the high and low water marks.

Q. Now don't you notice Mr. Ashmead that the distance between  
the sand hills and the low water mark at the point I have indicated  
is about seven or eight times as great as the low water mark and the  
sand hills on the other parts of the map?

A. That's very true. It is marked strand too, at that point.

Q. Do you know what was there?

A. Nothing only what I find on the map.

Q. What you have said is just your deduction from the map?

A. Well, that's true.

Q. For all you know the high water mark may have been an ordinary distance from the low water mark at that point?

A. Not according to that map.

Q. What is the range of the tide in front of Atlantic City?

A. That is the rise and fall?

Q. No, I don't mean the rise and fall but on the beach, how many feet about between high and low water?

108 A. Two to three hundred feet. It varies in different places.

Q. And that is practically uniform, is it not?

A. It is with the exception of course it varies the same as it does in that particular case.

Q. Now do you know if in this particular case there was a stretch of just beach, sand, running from these sand hills out at the point before you come to the high water mark?

A. Not to my knowledge, my actual knowledge, no.

Q. And you don't know to the contrary from your actual knowledge either, do you?

A. I don't know anything about it except what I find on the map.

Q. And that is the first map made of that locality of which you have any knowledge, isn't it, that is in Atlantic City, having knowledge or any record.

A. Except the division of Jeremiah Leeds estate.

Q. That only goes across, that don't show the shore line?

A. I think it does.

Q. Below the shore line?

A. I think so.

Q. When was that made?

A. Along about the same time that this was made, a little bit before.

Q. Well it was finished I think about the same time, about 1852.

A. No, the division was made before that.

Q. Have you a copy of that to show the surf line?

A. Down at the office yes, but I have not looked at it recently.

Q. Now Mr. Ashmead, may I show you another map that you have made for the purpose of asking you to give me a distance?

109 That is a map I think from which you made map D8, I presume that this is based on that one?

A. No.

Q. Now I ask you to look at the map made by you in 1912 showing the low water mark in 1852 and then by reference to the map D8 tell me what is the distance from low water mark to high water mark as you have indicated on D8 of 1852?

A. How much outside of the riparian commissioners' line?

Q. Yes.

A. The farthest point out is about 420 feet.

Q. Oh, you have made a mistake there.

A. That is east of the riparian commissioners' line?

Q. Yes. Now I want you to measure from the riparian commissioners' line?

Commissioners' line to the high water mark of 1852 as you have indicated on D8. How far is 420 added to this distance here?

The Court: What was that?

Mr. Bourgeois: 420 from the riparian line to the low water mark.

A. 1,190 feet.

Q. 1,190?

The Court: What do you mean by the expression "on D8 of the riparian commissioners' exterior radiants?"

The Witness: The line that they fix for the exterior of all the surveys. They fix a line there and then run out to that line.

110 The Court: That line was inside of the low water mark?

The Witness: No, it was away outside, it was 2,000 feet.

Q. Which was that Mr. Ashmead?

A. The riparian line.

Q. Now—

A. Well, that's never changed, the line the riparian commissioners fixed has always been the same.

Q. But that was inside of the original low water mark of 1852?

A. Oh, yes.

The Court: That was inside?

The Witness: There is the low water mark of 1852, and this is the riparian commissioners' exterior line.

Mr. Bourgeois: May I see those two geodetic maps? Is it all right for me to cross-examine on them?

The Court: Yes, you will have to cross-examine, so far as the witness' direct examination went it was very limited you know, he has only indicated what he considers the high and low water marks on those maps.

Mr. Bourgeois: I want to find out just how he was able to locate it.

Q. How were you able to locate on your map the high water mark from these two maps?

111 Mr. McCarter: So-called geodetic maps?

A. Scaled it from the street system out to the high water mark, from the southerly line of Pacific Avenue out to the high water mark.

Q. And the scale of this geodetic map D11 is what? 2,000 feet to the inch?

A. No, one foot equals 20,000 feet—one foot on the map equals 20,000 feet on the ground. That's the scale; divide that into twelve and you get 1,666 feet to the inch.

The Court: What do you mean by that, I don't understand you?

Mr. Bourgeois: One foot on the map equals 20,000 feet on the ground. Now if one foot on the map equals that then an inch would be one-twelfth of that.

The Court: Oh, an inch, I see.

Q. Now the width of this high water line that's indicated on a map—I suppose the high water mark on the beach has no width but in this map it is what part of an inch?

A. I could not scale the width of a line, it is too narrow.

Q. Is it as little as one 64th of an inch?

A. I suppose it is.

Q. How many feet would that make on that scale of 2,000 feet to the inch?

A. It wouldn't amount to anything, that is it is not 2,000 feet.

Q. Well, 2,000 feet to the foot you said?

A. No, I didn't say anything about it, I said 1,666 feet to the inch.

112 Q. I didn't ask you that, I said 2,000 feet to the foot—  
one foot on this map equals two thousand feet on the ground.

The Court: 20,000 feet on the ground.

Q. Now then I want to know if this is one 64th of an inch 1,666, would be about 26 feet, the width of that line, wouldn't it?

A. No.

Q. Well isn't 64 contained into 1,666 that many times?

A. It is so small you could not scale it at all.

Q. It would be 26 feet and a fraction—well, that's what I am driving at. This is so small you cannot scale it and when you attempt to reduce it to feet it becomes very uncertain?

A. There is 400 feet in one of these blocks.

Q. Yes, just to show you how uncertain it is, look at the avenue just to the right or eastward of the lighthouse.

A. You don't have to scale that at all because it crosses right at the intersection of that avenue, not necessary to scale that.

Q. Don't you see Mr. Ashmead that it passes just beyond the easterly side of the street, there is a street, there is a street; you have drawn a line down from the street above Atlantic Avenue for the purpose of extending it, but on this map the line passes to the eastward?

A. No, it runs about the intersection of the street.

Mr. Bourgeois: Now I want the Court to see. I say the line passes to the eastward of that—there is the street intersection—the line is entirely to the eastward.

113 The Court: What do you mean?

Mr. Bourgeois: This line.

The Court: Which is the high water line.

Mr. Bourgeois: Yes, is to the eastward of that street intersection.

The Court: Now, what do you say about that, Mr. Ashmead?

The Witness: I say that is not so what he says. He doesn't extend the southerly line of Pacific Avenue at all. If he extends it out to the easterly line of—

The Court: You ought to know more about it than he does, so you will take your version.

Q. Well, Mr. Ashmead, isn't it a fact you cannot do accurate work on a map with so small a scale as this?

- A. You can get it within a few feet, you cannot get it right down the foot, but it won't be many feet out of the way.
- Q. The width of the line is 26 feet anyway, isn't it?
- A. No, from six inches to a couple of feet perhaps.
- Q. Well now listen: 20,000 feet to the foot is 1,666 feet to the inch. Now do you think that is a less—is that line less than 1/64th an inch?
- A. Yes, I think it is.
- Q. Well how much do you think it is?
- A. It isn't necessary to scale it at all because it shows exactly where it crosses that intersection.
- Q. I have something else on my mind, is it as much as 1/100th of an inch?
- A. I don't know, I haven't scaled it, I cannot scale a line, I can scale between two lines, but when it comes to scaling a line I cannot.
- Q. Have you any instrument that can scale that line and tell you what part of an inch it is?
- A. Well you can get pretty close to it I suppose, we have never tried to scale the width of a line.

Redirect examination.

By Mr. Carr:

- Q. Mr. Ashmead, are you satisfied that the lines shown from the geodetic survey map, shown on Exhibit D8 are shown with accuracy?
- A. They are.

Mr. McCarter: Well I object to that your Honor, I don't suppose whether the witness is satisfied or not——

The Court: This is merely a summing up.

- Q. I will strike out "satisfied," is the line shown with accuracy?
- A. It is.

Q. Can you tell me how the exterior riparian line is established Atlantic City?

Mr. Bourgeois: We object to that, he does not know.

Mr. Carr: I asked him whether he can tell.

Mr. Bourgeois: It must be hearsay.

Mr. Carr: He may know.

A. All I know is by the maps put out by the riparian commission.

Q. Do you know how the exterior line runs, where it is located?

A. Yes, 2,000 feet south of the southerly line of Pacific Avenue at is the tangent. Then it curves around with a radius of 4,000 feet.

Q. Do you know how long that line has been established?

A. No, I don't know just when it was established. A good many years.

Q. How long have you known it to be in existence?

A. I think at least twenty-five years, perhaps longer.

Q. And do you know whether it has been adhered to in making of riparian grants?

(Objected to as immaterial.)

A. It has.

The Court: I will take it.

Q. That's all.

Recross-examination.

By Mr. Bourgeois:

Q. Mr. Ashmead, what was the beginning and end of the tangent?

A. The tangent is simply the street line.

Q. I know, but it had a beginning point and an ending point that circle?

116 A. In that case began down the beach and ran up to somewhere, where the beach began to curve to the northward, then it curves to the northward with a radius of 4,000 feet, I don't just remember the point it began now, what street.

Q. Where it ended.

A. No, I don't know just where it ended. Of course it was shown on the riparian commissioners' map.

Q. All you know is it had a radius of 4,000 feet?

A. Yes.

Mr. Carr: If the Court please I have a couple of very old gentlemen here as witnesses and counsel have consented that I may put them on out of order.

The Court: All right.

HARRY E. YATES, called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Yates, where do you live?

A. Atlantic City, N. J.

Q. And what is your occupation?

A. I am in the police department at the present time.

Q. How old are you Mr. Yates?

A. 43.

Q. Do you know the section of the beach around New Hampshire Avenue?

117 A. Very well.

Q. Were you ever in the boating business?

A. Yes, sir.

Q. What were you doing in that business?



A. I was in the Government Service, life saving service twelve years, and smack fishing business about 17 years.

Q. How long since you first knew the beach in the neighborhood of New Hampshire Avenue?

A. From boyhood.

Q. Do you recall its condition when you were a boy?

A. Yes, sir.

Q. What was the situation then with regard to high water mark?

A. Well, very small line. I used quite often to go to the life saving station there near Vermont and Pacific and there was a slough, what we called a slough, that's a depression in the beach which fills with water. On the outside there is a reach of sand and sometimes the tide does not come over that reach, other times it does. And I remember distinctly that I could stand at Vermont Avenue near Pacific and throw a stone in the water.

Q. Where was the life saving station?

A. Vermont Avenue near Pacific, about 200 feet from Vermont and Pacific.

Q. That is north of Pacific?

A. Yes.

Q. And is the lighthouse in the same block?

A. Yes, sir.

Q. You say the high water line crossed Vermont Avenue about where, with regard to Pacific Avenue?

A. Well, it crossed down below between Pacific and Oriental, it is now Oriental Avenue. Wasn't there at that time, I don't know how far.

118 Q. Oriental Avenue by the map appears to be 400 feet south of Pacific Avenue.

A. Yes.

Q. You say it crossed at a point between Pacific and Oriental Avenues?

A. Yes, sir, near Pacific.

Q. Do you know where it crossed New Hampshire Avenue?

A. I should judge up towards the inner side of the Royal Palace, now where the Royal Palace Hotel is. There was no street there in those days, it was all beach.

Q. There were no streets laid out?

A. Not on the east side of Pacific. Pacific Avenue ended at Vermont.

Q. There were no laid out streets there?

A. No, sir.

Q. What about the streets running north and south like Vermont and New Hampshire?

A. They ran to the beach and the curve of the inlet.

Q. Were they graded streets?

A. Gravel, yes, they were graded if you call it graded.

Q. Now did the high water mark come above or below Pacific Avenue at New Hampshire Avenue when you first knew the beach?

A. There was a gradual curve. What's this, Maine.

Q. That's Maine. The lighthouse would be up here, the saving station would be in there somewhere.

A. The Boardwalk would come right along here.

The Court: Now then, indicate on this map D8, now draw a line where you say the Boardwalk runs.

119 The Witness: Inside the high water mark there.

The Court: Well, where was the high water mark?

The Witness: Right along this line of marks here. This is Pacific Avenue, used to drive right up here, the Boardwalk, go right across the street. This was not graded in my boyhood days.

The Court: So you say the high water mark when you were a boy is where it is marked high water mark 1869-70?

The Witness: Yes, sir.

Q. Would that high water line be north or south of Pacific?

A. North.

Q. And about how far north of Pacific would you place it?

A. I could not say the distance.

Q. Can you say what portion of a block, whether one-quarter or half or a whole block?

A. I should judge about three-quarters of a block, according to this map, to the best of my recollection. You know I was a boy at those things did not impress my mind very deeply at that time. There has been a gradual making of land since I have been a boy outward. Now of course we would have northeast storms, this would wash away, but gradually make up again, but the tendency has been as long as I can remember to make out.

Q. And your memory goes back how far?

A. I was born in 1874.

The Court: Well it does not go back to 1874.

120 The Witness: No, no, I say I was born in 1874.

Q. How far does your memory go back, about 1880?

A. Yes.

Q. Do you think you can remember conditions when you were six

A. 1881. I was seven year-old when I first started to knock around there.

Mr. McCarter: There was a distinction in your mind between high and low water mark at seven do you say?

The Witness: Yes, I used to wait until the tide got up to go on the beach to catch fish, and I caught fish when I was pretty small.

Q. Then in your recollection has the high water mark ever been out further than it is at the present time?

A. No, the high water mark is as far out as I remember it, now.

Q. Thirty-five years or so that you have the recollection of the beach has it been making inward or outward, has the beach been making inward or outward?

A. There were times when it cut away quite frequently. We had a bad northeast storm there, it cuts away, it will invariably do that but it always had a tendency to make out a little further after each storm, when it started to build, it built farther than the previous beach was, you know what I mean.

Q. Do you know what the tendency of the movement of the sand is along the beach?

A. The tendency of all the inlets I remember, I have been at quite a few inlets on the Jersey Coast, the tendency has been on the north point to make up and the south point to cut away.

Q. That is the movement of the sand?

A. The north beaches would cut away and deposit the sand on the south side of the inlet.

Q. That is the movement of the sand has been southward on the coast?

A. These northeast storms cuts sand loose you know and seems to throw it on the other side. There is always a strong current with a northeast wind which we don't have with any other wind and these sands will make up afterward.

The Court: On the south side of the point?

The Witness: On the south side of an inlet which would be the north point of the beach, that's made up.

Q. That is the movement of the sand is southward, is that the idea?

A. Yes, sir.

Q. It is a general trend?

A. Yes, sir, our inlet at Atlantic City today is a mile across. Of course there are sand-bars. When I was a lad a man could go down and holler across the inlet, you could understand what he wanted, "Come get me a boat," something like that.

Q. Do you know how long that southward trend of sand movement has been going on?

A. All my life as far as I can remember.

Q. Do you remember the channel of the inlet, where it was with relation to Pacific Avenue?

A. The inlet follows the making of the beach very close. It is a very steep beach there, goes down all the way around the point from the inlet down to Pacific Avenue, very steep beach.

Q. How near in would the boats come, how close in would they come?

A. Within fifteen or twenty feet of the sand.

Q. And how close?

A. On the low water that is.

Q. Yes, and how close would they be to Pacific Avenue?

A. At the present time?

Q. Yes, as Pacific Avenue is laid out now.

A. Well, New Hampshire Avenue is a square from Pacific, two blocks now, over two blocks from Pacific to where the vessels sail now.

Q. No, I mean at that time, when they sailed in close, how close would they come to the lighthouse; maybe that will fix it.

A. You mean in time back?

Q. Yes.

A. I have sailed on vessels where there are houses now, and lots of houses; The Royal Palace is on land that was under water at one time that I can remember, that is a big hotel.

Q. Yes; how close would vessels sail to the Government Life Saving Station there when you were a boy?

A. Well, I should say 200 feet, 250.

Q. Within 200 or 250 feet, and the life saving station faces Vermont Avenue, does it?

A. Yes, sir.

Q. And is how far above Pacific?

A. A couple of hundred feet, about two hundred.

Q. About two hundred feet north of Pacific?

A. Yes, sir.

123 Cross-examination.

By Mr. Bourgeois:

Q. Now, Mr. Yates, you were born in '74?

A. Yes, sir.

Q. When did you begin to follow the water?

A. I began to follow the water as soon as I could get in a boat.

Q. And where was your home?

A. 15 South Virginia I was born.

Q. You remember I suppose, many of the hard storms that they had down there?

A. All of them, nearly all.

Q. And they would cut in how far at a time?

A. Well, sometimes they would cut in farther than others.

Q. Yes, sometimes as much as 100 feet?

A. Oh, yes.

Q. Sometimes more than 100 feet?

A. Sometimes more.

Q. Then it would take how long before that would be made out again?

A. I have seen a northeast storm cut away so that it would take three or four years before it ever got back to the starting point. Then it would gradually keep on going out. That's what I have been saying. You know that these storms have been cutting the beach away and alternately would fill up, but it has always been made out from my boyhood days.

Q. That is from '69, some place there, that's before you were born of course?

A. Oh, yes.

Q. But the storm would cut it away, then when the storm would subside gradually it grows, or maybe another storm would cut it out so far, but gradually it made out?

124 A. Yes, sir.

Q. Now along in about '81 do you remember that there was a peninsula off the point of the beach there that came down almost in front of Rhodes Baths and later then—you know where Rhodes Baths are, New Jersey?

A. They were not there then.

Q. But I mean Rhodes Baths at New Jersey Avenue, where they are now.

A. Yes.

Q. You remember there was a peninsula made there and came down?

A. That's what we call the slough. There was a slough started in the neighborhood of New Jersey, ran to Massachusetts. Then there was another one below that started between Massachusetts and Rhode Island and ran down by the lighthouse.

Q. And that slough up farthest, Massachusetts, that filled up the upper end of the inlet, didn't it?

A. Yes, sir.

Q. And made something like this—here is high water line, then comes back there, then comes back again, made a slough that you speak of?

A. Yes.

Q. Then after a while that filled in?

A. Yes, sir.

Q. That made a lot of land when that filled in?

A. Oh, yes.

Q. Now, do you remember about 1897, when that had filled in they had a large sale, I mean an extensive sale of lots there, the Eldridge Estate?

A. I don't remember the sale of the lots, I remember the slough, I remember of the slough filling in and I remember the making, but I don't remember any sale.

Q. How much would this beach make up a year, I mean  
125 how much would the accretion amount to in a year, could you tell?

A. There was no way of telling that Mr. Bourgeois.

Q. You could not tell from time to time?

A. No, you couldn't tell, there was some—I know it made up.

(Map marked Exhibit P1 for identification.)

Q. You talk about the streets being graded; which streets did you have reference to when you said they were graded?

A. Vermont Avenue was graded down to nearly the point of Pacific. Pacific Avenue was graded up nearly to the point of turning—oh, no, I am wrong, from Rhode Island to Vermont on Pacific was not graded, it was just soft beach sand, they used to drive on that, and get around to Vermont on here.

Q. Curbed, was it?

A. Wooden curb and gravel on the south side of Vermont Avenue or on the northeast side of Vermont Avenue towards the ocean. That was not graded only on the side towards the Government property.

Q. Do you recall when the curbing was first put in here, south of Pacific, wooden curbing?

A. No, I don't recall it being put in, I remember about the time it was put in they had these streets graded to the beach you know, within a short distance, and as the beach made out—of course they

extended the streets, kept building houses out and they would

Q. Extended the curbs; but tell me as nearly as you can, when they curbed New Hampshire Avenue south of Pacific many years ago has it been?

126 A. South of Pacific?

Q. Yes.

A. I could not tell you accurately, I don't believe I could you within five years, and I would rather not answer that because it would not be accurate.

Q. Mere guess?

A. Yes, mere guess, I remember that, but I have not got dates in my mind.

Q. I think that's all Mr. Yates.

EZRA A. SOMERS, called and sworn on behalf of the defendant testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Somers, where do you live?

A. Atlantic City.

Q. And how old are you Mr. Somers?

A. Well, I am about seventy, close to it, sixty-nine or seventy.

Q. How long have you been living at Atlantic City?

A. Well, I lived there about thirty-six years steady.

Q. When did you first come to Atlantic City?

A. '66 I think along there, shortly after the war broke up.

Q. Where did you board?

A. Now?

Q. No, then?

A. Why I boarded at Mrs. Nixon's.

Q. Where was that?

127 A. Top of the lighthouse; first went there a couple of years.

Q. Right there at the lighthouse?

A. Yes, sir.

Q. Do you know where the high water mark was?

A. No, sir.

Q. When you first went down there?

A. Never took no notice of it, don't know a thing about it.

Q. Do you know whether it was above or below Pacific Avenue?

A. No, I couldn't tell you anything of the kind.

Q. You don't know anything about it at all?

A. No, sir, I do not, all I know I seen the tide come up to the lighthouse step once and I heard his wife, Mrs. Nixon, say to the other man—

Mr. Bourgeois: No, no.

The Court: You heard Mrs. Nixon say what?

The Witness: Tell him to look out for the door step, that's only one time I ever saw that. She thought it would wash away.

Q. The tide came right up to the lighthouse, that was a storm tide?

A. Yes, it was a good one.

Q. You can not tell us then where the high water mark was?

A. No, I don't know anything about it, never took no interest in it.

Q. Well, I think that's all Mr. Somers.

128 Cross-examination.

By Mr. Bourgeois:

Q. Sometimes the storms were so high they washed all over the island, didn't they?

A. Well, I seen it come right up to the lighthouse step.

Q. Were you there in 1888?

A. I don't think I was there.

Q. Did you ever know a time—were you ever there when the ocean and the thoroughfare met at North Carolina Avenue, drowned out all the lawns about '90?

A. I have been there every summer but I was always away in the winter. I only stayed there these last thirty-six years. I lived there you see, I was away in the winter time.

WALTER SOMERS, called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Somers where do you live?

A. At the present time?

Q. Yes.

A. 25 North New Jersey Avenue, Atlantic City, N. J.

Q. And how old are you?

129 A. 74 next birthday.

Q. And how long since you have lived at Atlantic City; how long have you lived at Atlantic City, rather?

A. Well, I lived since 1866 about.

Q. When did you first come to Atlantic City?

A. Well, I suppose three years before that '66—'63 about.

Q. Were you running a boat at that time?

A. In the summer time.

Q. A sailing boat?

A. A small sailing boat.

Q. In and out the inlet?

A. Yes, sir.

Q. How long were you running a sailboat in and out the inlet?

A. How long had it been?

Q. Yes.

A. Run a sailboat up to two years ago.



The Court: What do you mean, going out fishing?

The Witness: Fishing and sailing parties.

Q. You made a business of taking——

A. Sailing parties out and return.

The Court: Out in the ocean?

The Witness: Out in the ocean part of the time.

Q. You of course, are familiar with the location of the lighthouse and the life saving station, are you not?

A. Well, I am at present.

Q. Well do you remember where the high water mark  
130 was when you first noticed it, that is in the vicinity of New  
Hampshire Avenue and Vermont Avenue; first do you know  
whether it was above or below Pacific Avenue?

A. Well now, I couldn't tell you that point because I wasn't interested and I never noticed.

The Court: A little louder.

A. I could tell you how near the lighthouse, that is somewhere near; I know it was near the lighthouse.

Q. How near the lighthouse?

A. Well, I couldn't just tell the distance, but I know it was very close.

The Court: Give us the approximate distance to the best of your judgment.

A. (Continuing.) The high water storm tide come up to the lighthouse—well I knew that at one time.

Q. Well, what about the ordinary high tide, about how close would that come to the lighthouse?

A. I don't think there was very much out, I think there was a very bold shore there at that time.

Q. A very bold shore at that time?

A. I think so, I have a recollection of it.

Q. Well can you give us some idea in feet whether it was fifty feet, one hundred feet, two hundred feet from the lighthouse?

A. Well, I would say 200 feet anyway.

Q. It was within two hundred feet of the lighthouse?

A. I should say that anyway.

The Court: You say the shore was bluff, was it?

131 The Witness: Bluff, yes, sir.

Q. Now did you notice the changes from time to time of the shore, whether it washed out or came back or made out, or what it did?

A. Well I am not—I always find since it started to make out since the Government put piers and jetties there is has been making out always, it has been gradually making out.

Q. When did the Government put in jetties?

A. That's something I couldn't tell you because I didn't take any notice at the time.

Q. Do you remember the jetty that was put in above or near Arc-  
e Avenue?

A. I remember that one was put in there, yes, sir.

Q. Was that the first jetty that was put in?

A. That's the first one to my recollection.

Q. Well, anyway, were jetties placed in the vicinity of the light-  
house?

A. Yes, sir.

Q. Several of them put in there, were there not?

A. There were three I know, but perhaps more.

Q. You cannot fix the year that they were put down?

A. I cannot, no, sir.

Q. But you remember the beach before the jetties were put down  
here, do you?

A. Well, now, that's what I stated about, I think it was '67 this  
thing happened, my recollection it was.

Q. And after the jetties were put down by the Government, how  
do you say the beach behaved after that?

A. Well, the way I find it is made out gradually all the time  
and been a making out ever since.

Q. Did you ever know a time when the beach was out as far as it  
is now, in the olden days?

A. Well, I know at one time, that was when I was a small  
boy come here, I know there was quite a lot of trees and hills,  
and hills down in front of the Atlantic Avenue, between Atlantic  
and Pacific Avenue.

Q. Between Atlantic and Pacific?

A. Yes, some wheres about there. Why, I know, we had so much  
trouble about our drinking water at that time, and we had to go  
there, there was a well there, my being a boy I used to go over to  
that water, that's why I remember that, otherwise I wouldn't have  
any recollection of it.

Q. Now, after the jetties were put in by the Government you say  
there was a slow but steady growth of the beach?

A. That's the way I remember it.

Q. There haven't been any losses in the beach since that time?

A. Well, I couldn't say that, perhaps there has been but made  
back again.

Q. But the net result has been a slow and steady gain?

A. Yes, taking from one year to the other, not a week or any-  
thing like that because it varies, it varies every day sometimes.

Q. Do you know what the general movement of the sand is along  
the coast, which way it moves?

A. Well, I always heard them talk and say that the inlets work  
south always, all the way down the coast, work south. Conse-  
quently, the inlet works south. It takes that sand away, moves  
the inlet the same way.

The Court: What is there there at Atlantic City around the point, a bay?

The Witness: No, there is an inlet.

133 Mr. Bourgeois: This is Absecon Inlet.

The Court: Well, the inlet is nothing but a fork in the ocean that goes into the bay?

Mr. Bourgeois: That's all.

The Court: It is sort of a bay made of the ocean, the beach curves in there.

Q. Do you know whether the general trend of the sand is southward along the beach?

A. Well, it is to the south of the inlet; down the coast further we can not say.

Q. Has Brigantine Beach been losing?

A. Always, ever since I knew anything about Brigantine.

Q. And this section of the neighborhood of Vermont and New Hampshire has been gaining?

A. Yes, sir.

Q. Is it the sand that comes over from the opposite beach?

A. We think that, we don't know but we think that's the case. It goes somewhere and it lodges over there in the centre of the inlet or else over on the shore.

134 Cross-examination.

By Mr. Bourgeois:

Q. Mr. Somers, how many years have you followed the water?

A. Well, I have followed the water since '66, that is, the inlet around there. I was on the ocean before, but not in that section.

Q. These inlets frequently have two ways, don't they, or two channels called the north and south channel?

A. That is the case some years.

Q. And sometimes they have only one channel?

A. Only one channel.

Q. Now, do you remember when the Absecon Inlet was a single channel and when you could stand on the Atlantic City side and call across to people at Brigantine Beach?

A. I think I can.

Q. At that time there was only one channel there?

A. There wasn't only one channel open at the mouth of the Inlet then.

Q. That's right. And that was a comparatively narrow channel.

A. Yes.

Q. After awhile it cut in on the Atlantic City side, didn't it for awhile?

A. Yes.

Q. And after a little while longer there were two channels opened up there, one north channel and one south channel?

A. If I recollect there was two ways out there.

Q. And do you remember that the south channel closed and the

north channel became deeper and cut away the Brigantine Beach, when the north channel opened up it cut away the Brigantine Beach and it closed the south channel?

135 A. I remember years that the channel cut through north and the channel working around south and would close up.

Q. And when the south channel closed up that added the sand to the north end of the Atlantic City beach, didn't it, gathered sand there?

A. Yes.

Q. At the present time they are trying to keep the main channel straight out open?

A. That's their object.

Q. At the present time?

A. Yes.

Q. At the present time how far across is it from Atlantic City to Brigantine, about a mile?

A. Yes, easy that a mile and a half to the main beach, but there is middle ground you know.

Q. Yes, I know, but that sand that washed off—well, I won't say that, but when the sand washed off of the end of Brigantine Beach it gathered on the end of the Absecon Beach, didn't it?

A. Well, we suppose that.

Q. Well, it did, it gathered there, it gradually increased. Now, do you remember about Great Egg Harbor Inlet?

A. I don't know anything about it.

Q. You don't know the same thing happened there?

A. Well, I heard it, but I don't know it positively.

Q. Made hundreds of acres of land on Ocean City, the beach, that is the south side of it?

A. Yes.

Q. And over in Ocean City the Government did not put any jetties down, did it?

A. Don't know that they did.

136 Q. Mr. Somers, these northeast storms, these are what do damage to the beach?

A. Yes, sir.

Q. They cut it in how much sometimes at a time?

A. Well, late years it don't wear away very much because they have these jetties all along there.

Q. I don't mean that, I mean in former years when it was way up there so far, it was cut in how much, 100 feet, 200 feet at a time, wouldn't it?

A. I couldn't tell exactly but I know some mornings we would get up and the beach all washed away in one night.

Q. And if you could just have no storms the beach would make up?

A. Well, I believe it would.

Q. Yes. I think that's all Mr. Somers.

137       SILAS SEELY, called and sworn on behalf of the defendant testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Seely, where do you live?

A. Atlantic City.

Q. How long have you lived in Atlantic City?

A. I have lived there continually forty-eight years.

Q. Do you know the lighthouse section?

A. Yes, sir.

Q. Up around New Hampshire and Vermont Avenue and the beach?

A. Well, we didn't use to know much about New Hampshire Avenue that's made up there since.

Q. Yes. Where was the high water when you first knew of the lighthouse section?

A. Well, when I first knew the tide come right to the lighthouse.

Q. And when was it you first knew?

A. That was about forty-eight years ago.

Q. Did the ordinary high tides come right up to the lighthouse?

A. No, sir, only storm tides.

Q. Only storm tides?

A. Because I was right there and seen it.

Q. And how close would the usual tides come?

A. Well, I should suppose where Pacific Avenue would be, about 200 feet, at that corner.

Q. You mean it would cross about Pacific Avenue?

A. Yes, their station is about 200 feet from Pacific Avenue.

138       Q. 200 feet north?

A. Yes.

The Court: Would that be Pacific and Vermont?

(Witness presents to the Court a book.)

The Witness: I got something here.

The Court: Pacific Avenue and Vermont?

The Witness: This was about 46 years ago (indicating on photograph), there is the tide. That book is supposed to be over forty years old, that's better than your map.

The Court: Well, that seems to be a good deal better than your map.

The Witness: That's a good deal better than the map here, that's an old relic.

Mr. Bourgeois: We object to the photographs unless they are proven.

The Court: How long have you had it in your possession?

The Witness: It has been in our possession about twenty years.

The Court: Does it correctly represent the condition as you remember them at the time?

The Witness: Yes, as near as I can remember. Of course, I can remember them before this, because I can remember when the tides come to the lighthouse.

139 The Court: It comes to the lighthouse on this picture.

The Witness: Not quite.

The Court: Where is Pacific Avenue located in here?

The Witness: There is one shows exactly. There is the lighthouse there; now Pacific Avenue from this way down, now you see there wasn't any New Hampshire at all because here is Vermont above the lighthouse—that map I suppose shows where New Hampshire is supposed to be.

The Court: Pacific Avenue ran this way?

The Witness: Forty-eight years ago there was no New Hampshire Avenue. Pacific Avenue ran this way.

The Court: Where is Vermont Avenue?

The Witness: Vermont Avenue is back there the other side of the lighthouse (Indicating on large photograph). Here is Pacific Avenue; there is a building on the corner of Rhode Island and Pacific.

The Court: Referring to that central picture, where is the lighthouse on that?

The Witness: Well, this one,—that's one corner and the lighthouse is over on this side.

140 The Court: Below the bottom of the picture?

The Witness: Yes, that's Pacific, the lighthouse is along this square, the Government station is on the other street. Now, that is forty-four years ago, but I was at the lighthouse when the high tide washed the sand away from the lighthouse.

Q. Now, Mr. Seely, at the time you speak of.

The Court: What time is that?

A. Why, the first is forty-nine years ago, that is, the first time I was to the lighthouse.

Q. Now, at that time was there any of New Hampshire Avenue at all below Pacific Avenue?

A. No, sir, nor there wasn't none north of it. They were built afterward.

Q. Now, when did it first begin making outward, the beach I mean?

A. Well, that was pretty soon after. Pretty soon after that it commenced to make out, I should judge that the way that map shows it was about five years afterwards.

The Court: The way what map shows?

The Witness: The picture, this photograph.

Mr. McCarter: I think we ought to know whether this witness' recollection is the fact or whether he is testifying from the photograph.

The Witness: We can have the recollection, I was there.

Q. Do you know whether the photographs correctly show situation that you know at that time?

141 A. I do. Why I know, that is by the other photograph that they all compare with what I knew at that time.

Q. Do you remember when the Government put out the jetties in the neighborhood of the lighthouse?

A. Yes, sir, I do.

Q. Do you happen to know what year that was?

A. I could not tell exactly, I should think it was about, as near I could remember, about forty-two years ago.

Q. Then, did the beach begin to make or to lose after that time?

A. The jetties helped it to make, helped the beach to make.

Q. Now, do you know whether the beach has been making or losing since?

A. Well, at times it would lose some, but when it would make it would make out more than it lost.

Q. Has there been a steady growth in the beach since that time?

A. Yes.

Q. Did you ever know the high water mark to be out further than it is now?

A. Not at that point, but I have at other points near there.

Q. Well, speaking now of New Hampshire Avenue, did you ever know the high water mark to be out further, the ordinary high water mark to be out further than it is now?

A. Well, where do you mean, where Maine and New Hampshire comes out there.

Q. Here is New Hampshire, the present high water mark is testified to be down here. Now, in the earlier days was it ever down that far?

A. No, not that I know, it wasn't down any further.

142 Q. The present location is about the furthest location out is it?

A. Yes, at that point.

Mr. Carr: I want to offer that photograph in evidence.

Mr. Bourgeois: That's objected to because it is not proven.

The Court: You may cross-examine him on it.

Cross-examination as to photograph.

By Mr. Bourgeois:

Q. Look at this picture of the lighthouse and tell me where you think the photographer stood to take that picture?

A. Well, that would be pretty hard to tell; I never took a photograph.

Q. Well, he must have stood out in the ocean somewhere, didn't he, that shows the ocean in front of him; that's the inlet up there?

A. Yes.

Q. Now, where could a photographer have stood so as to be high enough to have taken that and shown the top of those houses?



A. Must have taken them from the water. Now these were probably taken from the lighthouse.

Q. Now, that's all right, that's different, but I want to know where the protographer could have stood so that he would have been high enough to have got the trees and other objects beyond the houses back of him?

A. He could take them from the lighthouse.

143 Q. But he could not take the lighthouse if he was in the lighthouse, he must have stood out here somewhere. Does that look to you as if that is a drawn picture, not a photograph?

A. Well, I took it from the others.

Q. Well, I know——

A. I know but they all show so plain.

Q. They could have taken all them from the lighthouse, but where could they have taken the one of the lighthouse? Isn't that one of the lighthouse a drawn picture?

Mr. McCarter: They would have to have an aeroplane to do it, they didn't have any then.

The Witness: They didn't have any then.

Q. Now, this bulkhead along here indicates practically you say Pacific Avenue; that's Pacific Avenue, isn't it? Pacific Avenue is running along that way?

A. Yes.

Q. Now, what streets can you see along there; you can not see New Hampshire, you can not see Vermont either, can you, the houses prevent you from seeing either of those avenues, do they not?

A. At that time there was no houses on New Hampshire, that is, forty-six years ago.

Q. You are quite sure about that?

A. Oh, there might be a shanty or two.

Q. Now, can you see those shanties there or are they covered up by the other houses?

A. They are houses.

Q. Can you see Vermont Avenue?

A. I only see the stations there.

Q. Yes, right at the rear of the station Vermont Avenue  
144 is just beyond this one building next to the lighthouse, right out like that?

A. Yes, sir.

Q. Right where that pencil is, New Hampshire comes right there one square above, don't it, it would come out right where that pier is approximately, wouldn't it?

A. Well, it would now, yes.

Q. Well, apparently there was something there at that time, the flagpole is just about that point, but there are trees still further up here, that's true, and other houses up on the point of the beach, isn't that true?

A. Yes, the flagpole is there.

Q. And you can not tell whether New Hampshire is on that map or not because you can not see it.

A. You can not see it.

Q. Because it would be hid by the houses if it were there, wouldn't it?

A. Yes, if that's taken that way, no doubt about that.

Q. How old are you, Mr. Seely?

A. 67.

Mr. Bourgeois: Now, if the Court please, we object to that photograph because that cannot be a photograph to begin with, that is of the lighthouse cannot be a photograph. There is no place from which that could have been taken. That is simply a picture that has been photographed. That may be true of all of them.

The Court: Well, I think the witness wants to keep this anyway.

The Witness: Yes, I guess he does.

145 Mr. McCarter: He has the photograph made before photography was invented.

The Court: I don't think I will admit it Mr. Carr.

(Hearing adjourned to Wednesday, October 10, 1917, at 10 A. M.)

146

Wednesday, October 10, 1917—10.30 A. M.

Case Continued.

Appearances: Same.

Mr. Carr: If the Court please, a number of witnesses I put on yesterday I think were really in rebuttal, there are still quite a number of elderly gentlemen here who would like to be heard and get away. One of them is in the Government service. If I may proceed in that way I will do so.

The Court: All right, proceed, it does not make a whole lot of difference how we proceed.

THOMAS J. HORNER, called and sworn on behalf of the defendant testified as follows:

Direct examination.

By Mr. Carr:

Q. Captain, you live at Atlantic City?

A. Yes, sir.

Q. How long have you lived down there?

A. I came to Atlantic City in '77.

Q. And have been living there ever since?

A. Off and on, yes, sir.

Q. Was that the first you had been to Atlantic City, in 1877?

147 A. Yes, sir.

Q. And how old a man are you, please?

A. I will be 70 next birthday.

Q. Do you know the beach in the neighborhood of Vermont, Rhode Island and New Hampshire Avenues?

A. Yes, sir.

Q. What did you do in Atlantic City in the early days?

A. I was on the police force.

Q. And what was your beat?

A. My beat was from Massachusetts Avenue up to the inlet.

Q. How many years were you patrolling that beat?

A. Only in the summer-time, that three months.

Q. One summer or several summers?

A. One summer.

Q. When did you first know that section of the beach?

A. Fifty years ago.

Q. For about fifty years?

A. For about fifty years.

Q. Are you familiar with it at present?

A. Yes, sir.

Q. Do you know where the high water mark came in the vicinity of Vermont and New Hampshire Avenues when you first knew the beach in 1850?

A. Yes, sir.

Mr. Bourgeois: 1850.

Q. Oh, pardon me, fifty years ago.

Mr. Bourgeois: 1869 or 1867.

A. Yes, sir.

148 Q. Where did it come?

A. I will tell you. When I show this to the Court if it will admit it after a bit.

Q. Well, first tell me where it was from memory, won't you.

A. Well, my memory when I have a contract to put the buoys down at Absecon Inlet under the Government.

Q. Do you remember when they put the jetties out in the vicinity of the lighthouse?

A. I do.

Q. Did you work on that job?

A. I did not.

Q. And when was it they put out those jetties?

A. I could not tell you, I did not keep no record of it.

Q. Can you give us some approximate idea?

A. I was married in 1882 and I think it was put out in the neighborhood of '82, sometime, or previous to that more than likely.

Q. Do you know where the high water mark was when they were put out the jetties?

A. There was no high water mark.

Q. Well, the ordinary high water mark I mean?

A. I don't think there was ever any high water mark or low water mark either.

Q. Well, tell me in your own way where the water came?

A. Well, the water came then, when I show this to the Court where the water came at that time.

The Court: Now, tell us, don't both showing us.

The Witness: It came to one corner of the lighthouse lot at the time.

149 Q. That would be above Pacific Avenue, between Black Island and Vermont Avenue, would it not?

A. Yes, it would be there.

Q. And where was New Hampshire Avenue then?

A. New Hampshire Avenue then ran on Atlantic Avenue, it ran down to the Black Lot.

Q. Where was the Black Lot, can you point out about where it was?

A. That Black Lot isn't on here. That's the lighthouse then. It cut across—I will show you on this sketch I have, across on a certain angle to Massachusetts.

Q. You say you made a sketch to show that?

A. This morning, yes.

Q. Have you got it here?

A. Yes.

Q. May I see it?

A. Yes, if it pleases the Court.

The Court: You show it to them.

Q. What is the sketch that you now produce, just tell his Honor what it represents?

A. This represents where I was on the boat when I was on the police force from Massachusetts Avenue to the inlet.

Q. And what does this line here—

A. There is where Massachusetts ended before you got down to the Boardwalk. There wasn't any Massachusetts ran any further than this on Pacific, it ran here to the lighthouse and cut off part of the lighthouse lot.

Q. You mean Pacific ended at the lighthouse at that time?

A. Pacific ended at the lighthouse at that time.

Q. It was not in existence east of the lighthouse?

A. No.

150 The Court: What was there east of the lighthouse?  
The Witness: Nothing.

Q. What about Vermont Avenue?

A. Vermont Avenue ended here to the Black Lot, this is Atlantic here, you see it ended here at Black Lot here. This cut part of Black Lot off here you see.

Q. That is, Atlantic Avenue ran east of Vermont for about how far?

A. From out to the Boardwalk now you mean?

Q. No, from here to here.

A. I suppose that lot is about 200 feet.

Q. That is, Atlantic Avenue stopped about 200 feet east of Vermont.

A. Yes.

Q. Where was New Hampshire Avenue?

A. There was no New Hampshire Avenue.

Q. There was no New Hampshire Avenue at all?

A. That was—no.

Q. Now, as to what time are you speaking?

A. I was speaking, I didn't take no record of that at that time, but I think I was on the police force in the neighborhood of '79 about.

Q. And that's the condition you found in 1879?

A. That's the condition I found in 1879 when I was on the police force up here.

Q. Now, I see some memorandum of figures here. Take the figures 778 in the line of Atlantic Avenue extended, what does that mean?

A. That means from this point here where the high water mark was here out to the present high water mark now what you call the present high water mark.

151 Q. 778 feet?

A. 778 feet, yes.

Q. Now, I notice the figures 963 feet in the line of Pacific Avenue extended, what does that mean?

A. That's where it cuts from the lighthouse down to the present high water mark now.

Q. And I notice the figures 1,110 feet in the line of Massachusetts Avenue extended, what does that mean?

A. That means that the line came from here outside the Burkhard property down to the Boardwalk where it extends now the high water mark, 1,110 feet.

The Court: Where did you get those figures?

The Witness: I measured them myself.

The Court: Recently?

The Witness: Yes.

Q. Now, the mark here, Boardwalk, does that indicate—

A. That indicates the Boardwalk.

Q. The present location of the Boardwalk?

A. This indicates the high water mark outside the Boardwalk.

The Court: The line that you mark "H. W." is the high water mark?

The Witness: Yes, "H. W." is the high water mark. And on Baltic Avenue it is 315 feet, and when you get up further out to the inlet it would come out there to a point you know.

Q. You made this sketch yourself?

152 A. Yes, this morning.

Q. You made the measurements yourself?

A. Yes.

Mr. Carr: I did not know anything about this but I will do the map.

The Witness: I just thought it might help the Court along.

Mr. McCarter: Now, if your Honor pleases, I really think ought to be told by counsel what his theory is of the materiality of this evidence. I have not heretofore objected because we are going along in a friendly way and there is an important question he wants to be finally determined, I am as anxious as anybody else to think to have every possible point of view illuminated, but I fail to see, and I would be glad to be enlightened as far as I am concerned at the present time, upon the materiality of this evidence.

Mr. Carr: Well, if the Court pleases, this is really rebuttal by way of anticipation. I explained at the outset my view is that our prima facie case was established when we showed a title in the defendant proceeding from the common grantor plus the state's riparian grant that that made out a prima facie case. This is entirely by way of rebuttal and based upon certain allegations in the bill, which was put in the amended bill, which went to show what I presume is intended to be the theory of evulsion, that this land was lost by great storms, and that because it was lost suddenly and by evulsion, instead

153 of being lost by erosion that there is some different right in the complainant, he has not lost his title as he would have lost it if he had lost it by erosion. I think that is the theory of the plaintiff's case, I think he claims some peculiar rights because of that fact. Some of the textbook writers do make such a distinction although it has not been recognized in New Jersey. All that I can possibly do now is to get the story before your Honor, showing the conditions of these high water marks, we have all, in the previous trial of this case, we all attached sufficient importance to the high water marks to have them shown on these maps, Mr. Bourgeois as well as myself. If the position of the earlier high water marks is not material, why of course, this is not material at all, but here is a witness now who shows the conditions as he knew them, from actual knowledge in 1879, the position of the high water mark at that time. Our theory of this case is the defense of res adjudicata does not apply, we bought from the Atlantic Beach Front Improvement, who was the owner of the common title. At the time he bought—that is our predecessors in title bought the shore line ran approximately along the dotted line, now marked, "Line of outside sand hills." It is our view that the common grantor could not assert against us any retained territory between high water mark of 1852 if it were a fact further out than the present high water mark, and he could not retain such a right, that we have a natural right—would have a natural right to accretion and that natural right would be to an equitable division of the accretion formed along the common shore line.

The Court: What part of the land does the plaintiff claim, the triangle?

154 Mr. Carr: The defendant claims the triangle, the plaintiff's title is beginning at Dewey place running 190 feet down beach when of course, he is intersected by this riparian grant, the riparian

grant intersects him here, it does not close him off. Instead of his not getting the land he gets more land, but he gets it in a different location.

The Court: What part of this plot marked "A," which was in the Bartlett grant, was it that the plaintiff claims to own?

Mr. Carr: The plaintiff claims to own 190 feet right straight down this way. Then he also claims the right to follow this angle here down to the exterior line, down to the line of 1852.

The Court: What do you mean, up that way?

Mr. Bourgeois: That is the part that is disputed, that triangle in there.

The Court: That is the very point I was speaking of, this triangle right here.

Mr. McCarter: I would like the opportunity to confer in the other room for just a few minutes with Mr. Bourgeois and Mr. Arnold.

Recess.

155

### Afternoon Session.

Mr. McCarter: Well now, may it please your Honor, I feel relieved that my suggestion provoked the frank discussion that counsel has given us with reference to his ultimate claims here and I think that he is not in a position to make that claim. Your Honor recalls, as we said yesterday, the act under which we are proceeding in this case requires if it requires anything at all that the defendant specify in his pleading the claim that he makes to the property, the possession of which is in the complaint and the quieting of which is the ultimate purpose of the suit. There isn't any other statute like it that I know of and Vice-Chancellor Stevenson, in a case and one or two others of our Judges, have returned the idea that the whole purpose and object of the act is that the defendant when he files his answer must specify in the language of the statute exactly what claims he makes to the locus in quo so that the complainant knows what his claim is. Now, pursuant to that requirement the defendant has specified in his answer but one thing and that is the riparian grant, he has not suggested that he has got any right by accretion, that he has any other title to this locus in quo in dispute here than the right that he thinks he obtained by that grant, and to give a lot of evidence here now designed to show that whether his riparian grant which we claim is void as to us is good or bad, nevertheless he has got a title by accretion which is going to be apparent basis of his ultimate claim here is such a departure from the situation as that I think it should not be permitted. It is not the case of an ordinary pleading where you  
 156 would set up a certain thing and come in and prove something else and make the punishment fit the crime by amending your pleadings at all. If your Honor desires I will read the cases to you which show that the purpose and object of the act is to require the defendant to come in and specify what his claim is to our property and having specified it to prove the title specifically, not prove something else, and we respectfully therefore insist—



The Court: Well now, he says that he completed his case when he put in the riparian grant. Now he says this is all by way of anticipation merely for the purpose of making it convenient in letting these elderly gentlemen leave so that they won't have to be brought here again.

Mr. McCarter: Well, he said, too, your Honor, as I understand him, and I think he will say I am right about this, that the effect of this evidence and all other evidence that he is going to offer is ultimately to get him entitled to claim this locus in quo on the doctrine of accretion and the way the side lines run and that whether his riparian grant which he has put in be good or bad doesn't make any difference, nevertheless it is accretion and it is accretion in front of his property, and the lines being run the way that the grant ran he would get it by accretion if he did not get it by the grant. Well now, he has never suggested such a thing in his pleadings. It is the first time we ever dreamed that he had such a claim.

Mr. Carr: Mr. McCarter, I hate to interrupt, but it is not for that purpose at all. Of course, the case never runs quite smoothly when you call witnesses out of turn. I have made that out my prima facie case and am satisfied with it. I am calling in these old gentlemen who desire to get back to Atlantic City, at this time, and necessarily I have to anticipate some of what your proofs may be, and I may not be guessing entirely right. If I am not guessing entirely right it may be that this testimony is not relevant but that is a risk that has to be run if it is taken out of turn. Of course, if you object to its being taken out of turn I will have to keep these old gentlemen.

Mr. McCarter: It is not that we object to the mere order of proof but I understand the effect of this evidence, whether it comes now or later, it makes no difference to us, when it comes—the time and the offer makes no difference—as I understood counsel, I may be wrong, his idea was that he might claim here under some theory of accretion and if this evidence either offered now or offered later tends to support that kind of a claim we object to it.

The Court: Well, I don't understand that that was his point. I take it—I may be entirely wrong, what his point is that at the time of the grant by the riparian commissioners the high water line was at a point about where the ground begins to go eastward or towards the ocean and that therefore that was all land and not water that was covered by the grant, and therefore that he had a right to it, isn't that your point?

Mr. Carr: Yes, that's my theory.

Mr. McCarter: If that's his point we are perfectly willing to meet that case, but I certainly misunderstood him at the time. My associates did the same, because we have all gotten out from the remarks Mr. Carr made to your Honor the idea that I hope ultimately in this case in the event of our being able to satisfy your Honor that if it be true that at the time that the grant was made that it commenced at the high water line, it certainly isn't any longer true, and our claim is that that high water line

an ambulatory line and that the private owners' line goes out to the high water as it increases by accretion, and that a state's grant is taken subject to that right of accretion, and that the state can not grant something as against the private owner that becomes his by law of accretion. Now we are prepared to meet that and I think my friend realizes that and is trying by this way of giving these gentlemen the appearance of age and infirmity, which I don't think the captain on the stand deserves, to slip in some evidence here which will aid him when he ultimately comes to make such a claim. Now, if he has any such claim I object to it because he has not specified it. We are perfectly willing to have the situation at the time the grant was made and the present situation, that is the case, of course, but to have it brought out that this case could be supported by the defendant on the theory that regardless of the grant he has got some rights by accretion we object to it. Now, with this talk why it may be better to let the evidence go on, but we don't want any misunderstanding about this.

The Court: Well, we will let the evidence go on.

Mr. McCarter: We have no possible objection to the order of proof if these gentlemen want to go away, that does not bother us a bit.

159 The Court: Mr. Carr offers in evidence the sketch made by the Captain which is made for the benefit of the Court and which I think in view of the labor he has gone to I should accept.

The Witness: I just took it off this morning, I had nothing to do.

The Court: All right mark it in evidence

(Sketch marked Exhibit D12.)

By Mr. Bourgeois:

Q. What is the scale of the sketch?

A. No scale there at all, I wasn't attempting to make it.

Q. Well, is it the same scale both ways?

A. You see north there don't you?

Q. With the same scale—take this as Massachusetts and Rhode Island, that was about how many feet on the ground?

A. I did not measure that.

Q. Well, it is 350 feet isn't it?

A. Yes, that's about the width of a block.

Q. Now, the distance between Pacific and Atlantic is 500?

A. Yes.

Q. Then your scale would seem to be elongated?

A. Well, I didn't make it correct you see, because I had not time.

Q. Now, take this line you had for the high water line in 1877 running from Pacific Avenue down, did not that line bear further to the west—you see you have gone across Massachusetts and Connecticut Avenue. Now, it crossed Connecticut Avenue at a

160 distance of about 100 feet below or 150 feet—no, about 200.

A. Suppose we curve this a little and run it down to New Jersey where the Wright property was.

Q. Didn't it run from this point on a curve like that?

A. Well, I didn't make that. After you get down past Massachusetts Avenue it did.

Q. Yes, curved on around.

A. Yes.

Q. And it wasn't more than about two or three hundred feet from the southerly line of Pacific on Connecticut until you came to the water line, was it?

A. Curved there you know.

Q. Yes, and then you went on down that same line and it curved in almost parallel, ran almost parallel with Pacific until it got down to Missouri, didn't it?

A. No.

Q. How far down?

A. I don't think it ran down further than South Carolina.

Q. All right. And down, when it got to South Carolina, rather down at Pennsylvania, that's three squares above South Carolina towards the inlet?

A. Yes.

Q. When you were down at Pennsylvania it was in how near to Pacific Avenue?

A. I didn't measure it.

Q. Well, you can recall, can't you from memory?

A. No, I couldn't tell you, I was not down there.

Q. Can't you remember where the Seaside House used to stand?

A. Yes.

161 Q. Right close to Pennsylvania about 150 feet?

A. Yes.

Q. And from that point along the high water line ran on a curve after it got up to Connecticut to the point you have mentioned in Vermont?

A. It ran in a short distance, the Boardwalk;—now, I guess a couple of—in fact up to a thousand feet.

Q. Now, assuming for the purpose of this question that the line outside of the high water mark as you remember it back of the time, the accretions made upland from the ocean, that would include these hotels, would it not, first the Seaside—well, let's go down to South Carolina?

A. That may be the Seaside.

Q. Well, I mean where they now are, let's go as far as South Carolina.

Mr. Carr: Pardon me, is this your general cross-examination?

Mr. Bourgeois: Yes.

Mr. Carr: I had not finished.

Mr. Bourgeois: Oh, I beg your pardon?

Mr. Carr: I thought you were cross-examining on the map.

Mr. Bourgeois: I thought the Court admitted the map.

The Court: I did and I think I would have been lacking in politeness if I hadn't.

Direct examination resumed.

By Mr. Carr:

Q. Captain, do you know where Tim Parker's cottage was or is on South Vermont Avenue?

A. Well, I remember when he built the cottage there.

Q. Right across from the life saving station?

A. Right across from the life saving station.

Q. Can you indicate it on this colored lithograph map of Atlantic City? Here is the station, it is marked, T. H. Parker, is that the house?

A. Yes, that's the house, there.

Q. Now, when that was built do you know where the water came?

A. I don't think the water came anywheres nigh that at that time, but when the cut came across from the lighthouse his house stood on piling if I am not mistaken.

Q. The water came right up to it?

A. The water came under it.

Q. Then the water came then up to about the life saving station?

A. It came across here from Vermont, cut one corner of the lot off, it cut one corner of the lighthouse lot off. Here you see, just the corner here is where the Government put jetties in there to save the lighthouse almost in Vermont Avenue.

Q. Captain, do you remember any great loss of land from storms in this locality since you have known it?

A. Well, yes, the line now where the high water mark is now is almost out as far as it was fifty years ago, I don't think it will ever go any further because there is permanent sod there, never been cut away, almost ten or fifteen feet of water right down after you

163 drop off the sod. That's permanent beach there. All the sand washes off the beach, washes under there, in there, goes and makes sand somewheres else, and makes a bar somewheres else.

Q. Well, where do you say the high water mark is today?

A. There is no high water mark today.

Q. Well, where does the water come as compared with where it came fifty years ago?

A. I saw it wash up there to Connecticut Avenue, you might call that a high water mark.

Q. I don't mean storm tide you take the dry land. Is there as much dry land or more dry land or less dry land than when you knew it fifty years ago?

A. I think it is just about permanent where it was fifty years ago, it is just about as far out now as when I first had the contract with the Government to put the buoys down.

The Court: I don't understand that, that fifty years ago the land was quite a ways back.

The Witness: Back from where it is now?

The Court: Yes.

The Witness: No, I think it is now just about where it was fifty years ago.

The Court: Well, I know before, the water came up to the lighthouse, fifty years ago.

The Witness: Well it did.

The Court: Now, it is several hundred feet southeast.

The Witness: It cut down to sods then.

164 The Court: I don't care anything about the sod, where did the water come to fifty years ago?

The Witness: It come to where it is now in my opinion.

The Court: I thought you said it came up to the lighthouse.

The Witness: It did when the beach cut away, then it came up to the lighthouse.

The Court: Then gradually the beach went out further and further?

The Witness: Then gradually the beach went out further and further until it got now where it was fifty years ago.

The Court: Well then, there was a sudden cut before fifty years ago or right after fifty years ago?

The Witness: Yes, that came up to this Vermont Avenue here cut off a part of Black's Lot and went across here to the lighthouse.

The Court: Well, was that a sudden cut?

The Witness: No, gradual cut.

The Court: Well then, when was the highwater mark up there?

The Witness: Why, I think that I was on the police force in 1877 if I am not mistaken.

The Court: Now then, you don't know anything about 165 of your own knowledge where it was fifty years ago, do you?

The Witness: Fifty years ago is where it is now.

The Court: How do you know that?

The Witness: I was attending the buoys, had a contract under the Government.

The Court: And between 1867 and 1877 the high water mark had receded or rather the ocean had encroached?

The Witness: Had encroached on that property.

The Court: From the place where it is now up to the lighthouse?

The Witness: Up to the lighthouse.

Q. Do you know how that was worked, would it work away gradually or suddenly or how?

A. Why it worked away gradually and it moved out gradually after the Government built that jetty there.

166 Cross-examination.

By Mr. Bourgeois:

Q. Mr. Horner, go back to where we were talking when Mr. Car interrupted us. What hotels are now in Atlantic City that would be on this accreted land beginning with South Carolina Avenue and running north, the first avenue is North Carolina, and on North Carolina you have the Chelsea and Haddon Hall, don't you?

A. Yes.

Q. The next is Pennsylvania, and on Pennsylvania Avenue you have the Strand and the Seaside and next that you have, where there is a hotel, is at States Avenue, the St. Charles, next above that at New Jersey the Breakers, next above that at Pennsylvania Avenue you have the Royal Palace; they are all built now on land that is made since 1867, aren't they?

A. Yes.

Q. And when you come down below South Carolina Avenue you have the Traymore and the Marlborough and the Dennis and the Shelburne, all built on land that has been made by accretion since 1867, aren't they?

A. Yes.

Q. Now, about the early history up there Mr. Horner. They used to have some severe storms up there, didn't they?

A. Lots of them.

Q. And those storms would cut the beach away very deeply wouldn't they?

A. Sometimes they would.

Q. Then after the storm subsided it would gradually make out, sometimes much, sometimes little?

167 A. Yes, sometimes much, sometimes little.

Q. And then another storm would come along and that cut it away and that's been the history at that point of the beach first a storm would cut it out, and then gradually regain or maybe it would not regain; another storm would come along and cut some more out, but taking the whole forty or fifty years, it has been gradually to replace the land that was there cut and gradually replace by accretion?

A. I think sometimes the storms did not cut it away much.

Q. Depends on what direction the wind was and how severe the storm?

A. And how the current was running.

Q. Now, you say there is a sod bank where the fast land now is, that is allowing for the slope of the beach?

A. That solid bank runs from the inlet down to about Pacific Avenue.

Q. And that limits the extend of the high land in your theory?

A. Yes.

Q. In other words it won't go beyond that high bank?

A. Never goes beyond that solid bank again.

Q. But if it cuts in from that it will gradually make out to it again and that part will be ambulatory, first out and then in?

A. If it makes out that solid bank then it won't go no further.

Q. What evidence have you about that solid bank?

A. I have caught a many a black fish there.

Q. I see. In fishing you can tell?

A. Yes, I fish there most every year.

Q. And what is the drop when you come to that——

A. It will drop off to about ten or fifteen feet.

168 Q. Almost perpendicular?

A. Almost perpendicular.

Q. And that you say extends where?

A. That extends from the inlet down to about Pacific Avenue.

Q. Now, these accretions that are made up there, you say they are gradual, have they ever been so that you could see them make up, you could not tell from day to day that they were making up?

A. What's that?

Q. You could not see it made up from day to day?

A. You could not see it until after it got made up.

Q. You could see it after it had got made up but could not see it actually making up?

A. You could not see it was all made up until after it was actually made up.

Q. Now, where those buoys set that you set?

A. We set one in the inlet, then we set one between the bar and above the inlet, then we set one outside, what we call the sea buoy.

Q. They were set for the purpose of marking the channel?

A. Marking the channel.

Q. Do you remember the Government jetty—you weren't there when that was built, were you?

A. Yes, I was here.

Q. Where was it built from?

A. That was built out Baltic Avenue somewheres, about Grammercy Place there.

Q. And ran out into the inlet?

A. Yes, sir.

Mr. Bourgeois: Now, let's see if we can show the Court also that.

The Court: We had better mark this, there is offered in evidence and accepted by agreement and may be marked

169 Plate No. 1, part of Atlantic City, that is given the designation as D13, you have no objections?

Mr. Carr: No, except we don't want to be bound by the location of the high water mark there.

The Court: Merely for the purpose of reference.

Q. Here is Arctic Avenue or Grammercy Place, there is Baltic or Madison—referring to D13. Indicate as near as you can where that jetty was built. Now they ran a track right from the railroad—

A. They ran a track right from the railroad, it came out I think at Atlantic Avenue and then ran down almost to Baltic, then spurted off again out into the inlet there.

Q. I don't quite understand you. The railroad swings around from Atlantic up here across Grammercy Place or Arctic Avenue where did they switch off to build the jetty? They ran the track right out on that jetty, didn't they, when they were building it?

A. Yes.

Q. Now, where did they leave the beach?

A. I think they left the beach between Grammercy Place—

Q. Grammercy and what?

A. And Atlantic Avenue or I have never took a record of that, or else up to Baltic, it ran up there somewheres.

Q. Somewhere in the neighborhood of Grammercy Place?

A. I could tell you if I was up there, I could show you where it was.

170 Q. Now, do you know what that jetty was built for?

A. To protect the beach, protect the lighthouse.

Q. Or was it to divert the channel so that it would not come into the lighthouse?

A. Built there to protect the lighthouse.

Q. To change the course of the current?

A. To change the course of the current, yes.

Q. How long did that remain there, do you recall?

A. I should think that remained there in the neighborhood of four years or five years before it was covered up. Now, it is all covered up, you can not see it.

Q. I think that's all.

Redirect examination.

By Mr. Carr:

Q. Captain, during these storms that would sometimes wash away a part of the beach, would you see the land actually being lost during the storm, or would it be after the storm was over?

A. It would be after the storm was over.

Q. It was sufficiently violent and abrupt to see the beach go?

A. You could not see it go.

Q. It would be carried away, particles of sand, would that be the idea?

A. After the storm was over you could go down and see how much was cut off that.

Q. But you could not see the progress of the loss?

A. No, you could not see while it was cutting.

Q. You could not?

A. No.

171 Recross-examination.

By Mr. Bourgeois:

Q. Do you remember when what is now the point of the beach, the land below Pacific Avenue and easterly of New Hampshire Avenue was wood?

A. There used to be high cedar trees there, a big bluff.

Q. Now, were you ever there when there was a storm and saw those trees fall in?

A. I have seen them after they have fell in.

Q. After they have fallen in?

A. Yes.

Q. Have you ever been there when there was a storm and seen the sand hills fall in?

A. Oh, les, lots of times.



Redirect examination.

By Mr. Carr:

Q. Captain, would that be occasioned by the water cutting under them?

A. That come in under the beach, undermined the trees and the would fall over into the surf.

Q. But you couldn't see the cutting process?

A. No, you couldn't see that.

Q. That's all.

172 ALFRED B. SMITH, called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Smith, do you live at Atlantic City?

A. Yes, sir.

Q. How old are you?

A. I am sixty-five years.

Q. How long have you known the beach at Atlantic City in the neighborhood of New Hampshire and Vermont Avenues?

A. Well, as a boy I must have been around there somewhere about in the sixties. I might qualify that by saying I used to go there to Mr. Sharp's and play with his son around there, Sharp the rifle man shoot the rifle during the days—that was in the sixties. I would be there quite frequently.

Q. You would be there quite frequently?

A. Yes, sir.

Q. You have known the beach ever since?

A. Yes, off and on I have been there more or less.

Q. Now, when you first knew the beach do you know where the high water mark was?

Mr. McCarter: You are speaking of ordinary high water?

A. I don't know that I could give that exactly. At that time there was just little incidents that seem to have stamped themselves on my mind more particularly.

Q. Well, will they help us know where the high water mark was?

173 A. At that particular time?

Q. Yes.

A. I don't know that it would, no.

Q. Well, tell us in your own way where the high water mark was.

A. I recollect when the tide was very close up to the lighthouse. One thing stamped that on my mind was that at that time a Mr. Evart who was a mover of houses—he was ready to take the contract to move the lighthouse for the Government back and certain addi-

as in it. I believe that the Government did not think that was the thing. It was then looked upon as an immense undertaking, to move the lighthouse back. That was somewhere around, I don't know—I should think maybe in the early seventies.

Q. Was that before they built the jetties to protect the lighthouse?

A. Yes, I think so.

Q. Do you remember the fact that jetties were built in the neighborhood of the lighthouse?

A. Yes, I recollect when the Taxis jetty as we knew it to be.

Q. What was that?

A. That was built by the Camden and Atlantic Railroad. Taxis was their master mechanic, we generally knew it as the Taxis jetty.

Q. Is that the jetty that was run out?

A. The railroad ran out.

Q. Arctic Avenue?

A. Yes, piled out and stone dropped in.

Q. Afterwards were there other jetties built in the neighborhood of the lighthouse?

A. There was what we called the Government jetty, built down there—I couldn't give you the exact dates on that, but somewhere so far apart.

Q. You say the early seventies?

4 A. I should say somewhere about '72 or '73, thereabouts, to the best of my recollection.

Q. Could you indicate on any of these maps about where the water was when you first knew it? Here is the lighthouse—referring now to Exhibit D13. There is the life saving station.

A. Yes, I understand that. There is Vermont. It seems to me that—that about somewhere about 200 feet from the lighthouse the tide was. I mean that was when it was encroaching close there.

Q. It came about 200 feet south of the lighthouse?

A. No, more the east of the lighthouse.

Q. Can you indicate with the pencil about where?

A. Well, I should think that it went across this corner here, somewhere.

Q. Just put a mark on there.

(Witness marks a line X—X.)

Q. And then coming across to New Hampshire Avenue or Vermont, where would it go?

A. Well, I could not tell you much about that really; I know it went around that way. There was a big pool of water inside there.

Q. Do you know whether New Hampshire Avenue was there at all south of Atlantic Avenue?

A. I could not say whether that was graded or not, I don't recollect so much about that.

Q. Well at any rate it came across from X to X?

A. Came across that way to Pacific.

Q. And did it bear away in that same general direction or take a turn or what?

Mr. McCarter: He says he doesn't know.

175 A. I could not exactly say that from the fact my attention was more to the lighthouse than anything else above or below it.

Q. Now, from the time that you first knew the beach in the vicinity, has it made or lost?

A. Oh, made considerably.

Q. In the earlier days do you ever know of a time when it was out as far as it is at the present time?

A. I don't know that I could tell exactly that, I can not just locate Sharp's place, it was all cedar trees on his lot at that time that we used to go down there and shoot the rifles, I don't know where that was, I have never picked up a map to inform myself about that. I know we used to go there and have a target. He was a friend of my father's, and his son and me used to go together more or less. At that time my father lived at Brigantine.

Q. Brigantine is right across?

A. Yes, sir.

Q. Well, do you ever know of a time when the high water mark was out further than it is now, in your experience?

A. Not down here, I don't think that I ever did, no. Them accretions come from the washing away of the lower end of Brigantine.

Mr. McCarter: Well now, I don't suppose this gentleman really knows the origin of the accretions, it would take an expert to tell us.

Mr. Carr: You don't want it on the record?

Mr. McCarter: Well, I don't think he ought to volunteer these very technical and highly scientific answers, he has his own theories about it.

176 Q. Let's see whether he does know. Do you know how the beach came to make up over in the vicinity of Vermont and New Hampshire Avenues?

A. Well, it is by accretion, and the accretion comes in my way of thinking from the Brigantine because it is washed that way.

The Court: What makes you think that?

The Witness: Because it has gone from Brigantine—all the sand has gone to the inlet and brought it over that way.

Q. Do you know what the trend or movement of the sand is about that section of the coast?

A. South.

Q. All south is it?

A. South.

Q. How long has that southward movement been going on, as long as you know?

A. I could not tell you that, long before I was born.

Q. In all your experience the sand has been moving south?

A. Yes, then it will make up some little time.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Smith, your father lived on Brigantine Beach?

A. Yes, sir.

Q. And raised there?

A. Wasn't born there, no, sir, we was there in the early days, would be there about six months in the year, in summer-time. He kept a hotel.

177 Q. Brigantine Beach is the beach north of Absecon Beach, immediately north of Atlantic City?

A. Yes.

Q. Now, Absecon Inlet separates Brigantine and Absecon Beach?

A. Yes.

Q. Now, on the south of Absecon Beach comes Great Egg Harbor Inlet?

A. Yes.

Q. And then Pecks Beach on which Ocean City is built?

A. Yes, sir.

Q. Then north of Brigantine comes Little Egg Harbor Inlet?

A. North of Brigantine—Brigantine is between Little Egg Harbor and there—but Little — Harbor is north of Brigantine, yes, sir.

Q. Now then, I understood you to say that the course of these inlets—I mean the channel of the inlet is to gradually move south?

A. The channels of the inlet will move south and then they will fill up and then break out further and then drift down again.

Q. That's been his story repeated time and time again?

A. Yes. You take the one they have now, if they hadn't the dredger there the inlet would break out in the northern part and go south.

Q. The inlet would go south in what we will call the north channel, that washed away the lower end of Brigantine Beach, didn't it?

A. No, I don't think that, I don't quite agree with you on that.

Q. When did the north end of Brigantine Beach wash away?

178 A. The north end of Brigantine Beach—we had what we called the Little New Inlet just above Absecon Inlet as we know Atlantic City by. That did not cut away because then I could go away down and holler to a man on the Atlantic City Inlet and be understood, then when the company at one time got over there and went to fill this little inlet in then the water came and cut away the south end of Brigantine. That could be explained by a map. Of course, this is not in evidence, I won't show you that.

Q. Let me ask you one other question to bring out the thing I have in mind. When the channel would break out in what you would call the north channel——

A. Yes, sir.

Q. (Continuing:) Then the south channel would gradually fill up and the beach would make on the upper end of Atlantic City?

A. Well, I don't know as it done that so much.

Q. Well don't you remember Mr. Smith that it did make up from the lighthouse all the way out there?

A. Yes, it made up there.

Q. I expect you remember in 1897, when they had an extensive sale of lots there, that end that had been made up by accretion, the Eldridge Estate?

A. I may have heard that, I don't recall that.

Q. Well, now, do you know where this jetty was thrown out by—you say by the railroad company, the Camden Atlantic Railroad Company.

A. Mr. Taxis, I think he is employed by the railroad company—I don't know as I know the exact location, although I have played there lots of times.

Q. He was the chief engineer of the Camden Atlantic Railroad Company?

A. Well, he was connected with the Camden Atlantic Railroad Company in some way, we always knew it by Taxis Jetty.

179 Q. But the Government paid for that jetty, didn't it?

A. I don't know.

Q. It was known generally as the Government Jetty?

A. What we call the Government jetty was another one, but we used to call this Taxis. Maybe the Government paid for it, I don't know.

Q. What you call the Government jetty was made of boxes?

A. Cribs.

Q. Put down from the channels inside of—from the high water mark out, or put down in the channel and run part of the way in.

A. Yes, cribs.

Q. That did not protect the beach, did it?

A. I can not say about that, I guess they had trouble holding them there, something of the kind.

Q. Now, you know something about these storms along the beach?

A. I have saw some of them.

Q. And do they do some times very great damage?

A. Yes.

Q. You speak about a new inlet cutting through Brigantine Beach.

A. That was cut through in a gale of wind in 1861.

Q. How long did it take to cut it through, just one night?

A. Well, it was a little piece of beach and it cut through really in one day. There was a big bay back of that and when the high tide come the wind shifted off a severe northwest, it makes a sweep and it was only a gully when it cut it out.

Q. How large vessels would come in and out of that?

180 A. Not very large vessels.

Q. When did that cut through about?

A. 1861.

Q. Do you remember about that same time another inlet cut through the Absecon Beach down near Longport, in one night?

A. I don't know that, no, I couldn't testify to that.

Q. How much have you known these storms to cut in the beach?

either on Absecon Beach or on Brigantine Beach, a single storm there, how many feet have you known to be washed away?

A. That would depend on places; where high hills were up I have known it to cut in there quite a distance, probably ten or twenty feet, undermine the hill, then it would drop down.

Q. And you could see that when it was cut—you could see the hills fall in and see it wash out?

A. Yes, sir.

Q. Now, have you ever seen the storms undermine the trees on Absecon Beach?

A. I never did see it, I know it has been done.

The Court: What do you mean by Absecon Beach?

Mr. Bourgeois: That's Atlantic City.

Q. Have you seen the storms undermine the beach trees on Brigantine Beach and they fell in?

A. No, sir, there has not been any there.

Q. Hasn't been any trees there?

A. In my days, there was at one time great cedar, but not that I have known about.

The Court: What is Brigantine Beach?

Mr. Bourgeois: Lies immediately north of Atlantic City. That's Brigantine is.

181 Q. You say you do recall when you could stand on Brigantine Beach and call across to a man on Absecon Beach, across the inlet?

A. Have done it.

Q. And that was a common thing, wasn't it, when you wanted to go across?

A. No, it wasn't that—when my father kept a hotel very often I would ride down on a pony and call to old man Somers if there was any extra baggage so he could take care of it, he was the man done the carting from the train.

Q. At the present time what is the width of that inlet?

A. Pretty close up to a mile, three-quarters of a mile I should think sure—but there is middle ground in it—high middle ground in it. It is just about a mile from Peters Beach to the dock. That's pretty near the width of it now.

Q. Well, with relation to Sharp's house where these cedar trees on Absecon Beach are?

A. That was not Sharp's property, not Sharp's ground.

Q. Then did they extend down to the point of the beach?

A. Why no.

Q. When was that Mr. Smith?

A. I don't know, somewheres in the sixties when I was quite a boy. I was born in '53, I suppose I must have been about ten or twelve years old, something like that.

Q. Along about '55 and '56 maybe?

A. Might have been just about that, maybe just after the war was over.

Q. That's all.

JOAB HIGBEE, called and sworn on behalf of the defendant testified as follows:

Direct examination.

By Mr. Carr:

Q. Do you live in Atlantic City?

A. Live in Atlantic City, yes, sir.

Q. How old are you, Captain?

A. Very close to 62, I was born in '55, on the 11th day of November.

Q. How long have you lived at Atlantic City?

A. About thirty-eight years.

Q. You have charge of a sailing yacht down there?

A. Yes, sir.

Q. What is it, what is it called?

A. The Dreadnought.

Q. How long have you known the beach in the vicinity of New Hampshire Avenue and Vermont Avenue?

A. Well, about thirty-six years.

Q. When you first knew the beach how close was the water to the lighthouse, do you know?

A. Well, it come in the corners of the lighthouse yard on Vermont and Pacific Avenue.

Q. And was New Hampshire there at all?

A. New Hampshire was not below Atlantic Avenue.

Q. New Hampshire was not below Atlantic Avenue at all?

A. No, sir.

Q. Now, from the time you have known——

A. Not to the best of my recollection.

Q. From the time you have known the beach has it made or lost ground?

183 A. Why it has been a making, a making ever since this last forty years, that is more or less you know, some times wash away and come back again, but kept on making this last forty years.

Q. Well, the net result year by year has been gains, to gain more land, is that the way it went?

A. Yes, sir, they haven't lost any land there I don't think for this last twenty-five years.

Q. Did you ever know any time when there was more land there than there is now?

A. No, sir.

Q. Do you know which way the sand moves along the coast?

A. Well, I think the natural movement is southerly all the time.

Q. Has it been going on that way as long as you know it?

A. Makes up. Up at the Royal Palace, what we call southeasterly it works on down when a storm comes. When the wind comes it works on down, fills in down below, then it fills in up again.

## Cross-examination.

By Mr. Bourgeois:

Q. You say you know the beach since 1881, thirty-six years ago?

A. Yes, sir.

Q. And where were you living before you came to Atlantic City?

A. Place called Leeds Point.

Q. You have been more or less familiar with the ocean and the beaches all your life?

A. In fact, all the time, ever since I was fourteen years of age I have lived on the ocean pretty much.

184 Q. And heavy storms make great inroads in them, don't they?

A. Yes, sir.

Q. Sometimes cut away 100 or 200 feet in one storm?

A. I have saw it cut away 50 or 75 feet in a storm. Sat there and looked at it and see the easterly tide, when a swell come in there, cut the sand, roll down there—it would roll down in twenty-five earloads to one sea.

Q. And the next swell came in, just took that out to sea and that's the last you ever saw it?

A. Washed it right down this way, to the southwards all the time.

Q. Where was that?

A. That's right at the foot of Madison, they call it Baltic Avenue in the old times.

Q. What used to be Baltic Avenue?

A. Yes.

Q. On Absecon Inlet?

A. Yes, sir.

Q. Right in the inlet. Then when the storm would subside and the wind would shift, and especially in the summer-time when we would have the southerly or westerly wind that sand would gradually come back again, wouldn't it?

A. Naturally works back again, sometimes takes three or four months though to get back what washed away in one night.

Q. Sometimes before you would get back what washed away in one night another storm would come and cut it back farther too?

A. Yes, sir.

Q. But if the storms would let it alone it gradually came back again?

A. Oh, yes, no doubt about that.

185 Q. Now, it is also true, isn't it Captain that when the beaches work south as you say and cut off to the north, and cut off of the north beach, for instance off of Brigantine Beach, or off of Absecon Beach, the lower end of it, that sand goes over and makes up on the beach below?

A. Well, not the north end of Brigantine wouldn't.

Q. No, the northerly beach loses the sand, and when it loses the sand, the other beach below makes the sand?

A. I have no doubt some of it comes across on Absecon Beach.



Q. Are you familiar with Great Egg Harbor Inlet more or less?

A. Well, more or less.

Q. Well, you remember how Longport has cut away about a half or one-third of a mile?

A. Yes, close to three-quarters.

Q. And do you remember how the Ocean City Beach is made so that in the Garden tract there is about 500 acres new land?

A. Yes, I think there is all of it.

Q. You also remember when this north end of Absecon Beach when the high waters came in to the lighthouse—you understand when it was cut in there; after a while that commenced to make out the beach commenced to make, and when it made there Brigantine lost?

A. Well, it has been a losing ever since.

Q. In other words as Mr. Smith says, we have got his land. Absecon has Brigantine sand over there?

A. Well, I couldn't say about that, most everybody thinks that's where it comes from. Don't see where it could get—they did not dig the channel any.

Q. That's right, Brigantine lost it and Absecon gained it?

186 A. That's what we always thought.

Q. Captain, let me show you a map.

A. I am not very familiar with map business.

Q. I want to ask you if you remember a slough that came in around the point of the beach in 1881? This is Pacific Avenue running along here (referring to P1 for identification). Now, if you look here you will find the high water mark of '81. It ran on along here away down in front of Massachusetts Avenue and then formed a sort of peninsula and came up around down along the beach again, making a slough in there from New Hampshire; extending down to Massachusetts Avenue. Do you remember when that condition existed there?

A. It was there when I went there.

Q. That's just the way it was, the way this map indicates?

A. Yes, come in down below there.

Q. Came up north to New Hampshire Avenue?

A. In fact it did not extend out, they made a slough in there five or six feet of water—it would go out again.

Q. Then finally the sand filled that up?

A. The sand filled that up.

Q. And that's what made the accretions to the beach at that point?

A. The sand filled it up from the outside washing over into it then the beach would come closer to the Boardwalk than what you could when the slough was there and after that got made up, it kept making up all the time after.

Q. In other words this bar or peninsula, that would have a tendency to break the force of the waves—finally the sand would stay in there and stick?

A. Sure.

Q. I think that's all.

187 Redirect examination.

By Mr. Carr:

Q. When you first saw the beach, I think you said at New Hampshire Avenue the water was nearly up to the lighthouse. Now, you have testified in regard to seeing large quantities of land carried away at a single storm. Your testimony in that regard—does it apply to the land at the foot of Vermont and New Hampshire Avenue or to land at other points?

A. Not me. I don't know anything about—I never was down around there in a full tide except at the foot of Baltic Avenue along the beach.

Q. You have never seen the washout that you describe at the foot of Vermont or New Hampshire Avenue?

A. No, sir.

Q. That's all.

Recross examination.

By Mr. Bourgeois:

Q. Just one other question I overlooked. Now, when these lands made up that was so gradual that you could not see from day to day, could you, whether it did make up?

A. No.

Q. But after two or three months you could see that it had made up?

A. Yes, sir.

188 JOSEPH C. HOFFMAN, called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Hoffman you live in Atlantic City?

A. Yes, sir.

Q. How long have you known Atlantic City?

A. Well, my first appearance in Atlantic City was in 1872.

Q. How old a man are you Mr. Hoffman?

A. I am seventy.

Q. Are you familiar with the section of the beach at New Hampshire and Vermont Avenues?

A. Well, I am not very familiar with it as I have not been a constant resident of Atlantic City, I was only a visitor in those days.

Q. How long since you have been a resident of Atlantic City?

A. About 16 years now.

Q. Of course, you know the location of the lighthouse?

A. Yes.

Q. When you first saw the beach in 1872 can you give us any idea where the water was with relation to the lighthouse?

A. I know the water was right almost around the lighthouse.

Q. Almost up to the lighthouse?

A. Almost around it, it was up to the door.

Q. Now, have you seen it from time to time since?

A. Oh, yes, yes, sir.

Q. Made out considerably since?

189 A. Yes, made out several squares.

Q. Did you ever have any knowledge of its being further than it is now?

A. No, sir.

Q. It is out now as far as it has ever been, as far as you know?

A. To my recollection, yes.

Cross-examination.

By Mr. Bourgeois:

Q. You have no reason to doubt that it was once further than that, have you?

A. No, sir.

Q. That's all.

Redirect examination.

By Mr. Carr:

Q. Won't you explain your last answer, you were asked if you had any reason to doubt that it was out further at one time, you haven't any information it was out further?

A. I have no information with regard to it.

Q. Did you understand the question in that sense?

A. Hardly.

The Court: What you meant to testify was that you would not swear it was not out further at some other time?

The Witness: That's the idea.

Mr. Bourgeois: That's what I meant to say, he had no reason to doubt it, because he knew nothing about it.

190 WILLIAM ARTHUR URQUHART, called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Carr:

Q. How old are you?

A. 74 Friday.

Q. And where do you live?

A. I live in Atlantic City.

Q. How long have you known the beach front of Atlantic City?

A. Since 1867.

Q. Did you do any work on the Government jetties?

A. Yes, sir.

Q. Do you know when they were put out?

A. The railroad pier that Mr. Taxis put out was put out in the winter of '75 and '76.

Q. And then were there some jetties put out near the lighthouse?

A. The Government jetties were put out in the winter of '77.

Q. Did you work on both of those jetties?

A. Yes, sir.

Q. Now, when you first knew the beach in the neighborhood of Vermont Avenue and New Hampshire Avenue where did the water come with reference to the lighthouse?

A. Well, Vermont Avenue you know in those days there wasn't any Vermont Avenue. There was nothing beyond the bend of the railroad.

Q. By the bend in the railroad do you mean the same railroad that makes the turn running from Rhode Island Avenue and—

191 A. Comes right down here to New Hampshire Avenue and the railroad company ran a "Y" out here to put their pier in, a little branch road.

The Court: So there wasn't any New Hampshire south of the railroad, referring to D13?

A. No, sir, there wasn't any Vermont Avenue. Nothing laid out, it was all meadow lots, of course there was lines there but there was no streets or nothing.

Q. Now, do you know where the high water mark came along there about that time?

A. No, sir, I couldn't tell you about that, every storm tide it shifted.

Q. But the ordinary tides, how close would they come to the lighthouse?

A. I suppose in them days it would come within 200 feet, maybe a little more or a little less.

Q. And did this Government jetty start right off from the railroad tracks?

A. Yes, sir, they ran a little branch out there so they could handle their stuff.

Q. Were the railroad tracks close to the water?

A. They laid a track, they ran that jetty out 300 feet, they used a land seine, drove piles with a hammer and ran the cars with the stone and brush.

Q. Were the permanent railroad tracks close to the water's edge at that time?

A. No—well, I suppose it was maybe 300 feet, that is up there where they ran from New Hampshire Avenue out.

Q. You mean the jetty was 300 feet long?

A. The jetty was but I mean where they started the branch road to the low water mark, where they first started **their cribs**.

192 Q. Well, I don't quite understand it, do you mean that the railroad at this point was about 300 feet inside of the high water mark?

A. Yes, sir.

Q. And then they ran a branch or spur of the railroad and built it right out on the jetty, was that it?

A. Ran the jetty and the railroad right on top of it.

Q. Now, since the time the jetties were built has the beach made or lost?

A. Well, for the first two or three years after they were made they lost a little, then after that they began to pick up.

Q. Has it been making or losing since?

A. Well, up until I left the beach in '81 why it was losing, I left the service in '81, and from that time I never took no particular notice of it.

Q. Were you in the life saving station there?

A. Yes, in 1879, left in '81.

Q. Did you ever know of a time when the beach was out any further than it is now?

A. Well, I don't know whether you could call it the beach or not, but there used to be a whole lot of flats there on a mean low tide.

Q. No, I mean the high water mark?

A. No, sir.

Q. High water mark is out now as far as you have ever known it to be?

A. Oh, it must be out further now, you know because that beach is made up a little bit all down below.

193 Cross-examination.

By Mr. Bourgeois:

Q. How far did you patrol—you patrolled south I suppose, didn't you?

A. Sir?

Q. You patrolled in the life saving station south from the lighthouse?

A. Yes, sir.

Q. How far down did you go?

A. Well, we could go about two miles, I think.

Q. Now that was in 1879 to '81?

A. Yes, sir.

Q. At that time the high water line of the entire ocean front of Atlantic City was very much nearer to Pacific Avenue than it is today, wasn't it?

A. Well, in a bad storm tide when a man had to go out nights sometimes we used to have to go through the lighthouse yard over to get on to Pacific Avenue.

Q. Which yard, the lighthouse yard?

A. Yes, sir, other times we had our long boots on we would go down around the corner of the fence and I suppose the water would come about up to your knee.

Q. What I want to find out is this, the high water mark along the Atlantic City front was then much nearer to Pacific Avenue than it is now?

A. Well, now see the beach that's made up there now.

Q. That's what I mean, at Pacific the beach has made up about 1,200 or 1,300 feet, hasn't it?

A. Yes, sir. We used to patrol the beach down there you know. Sometimes the high water mark would come pretty close to Pacific Avenue.

194 Q. And the Seaside House was at that time only about 150 feet from Pacific Avenue?

A. Yes, sir.

Q. Was it then called the Seaside House when Evans had it?

A. I think it was, yes, sir.

Q. And when you got down to Missouri Avenue how far was it to — from the high water mark from Pacific?

A. I can not tell you, you are getting beyond me now.

Q. Missouri Avenue wasn't laid out there?

A. I always located on the upper end of town.

Q. And all the inhabitants lived pretty much from Virginia to the inlet or Pacific Avenue?

A. Yes, there wasn't in them days—there wasn't anything below Arkansas Avenue at all only a sheet of brush clean down to the bend of the beach.

Q. You were in the life saving station from '79 to '81?

A. Yes, sir.

Q. You were in Atlantic City in '78?

A. Yes, sir.

Q. Do you remember of a very, very severe storm that occurred in '78 cutting in the beach terribly, in the fall of '78?

A. I don't know that I remember that storm particularly, we had so many of them there in those days.

Q. And they all cut in would they?

A. Yes, the beach would change every storm, every gale of wind.

Q. I suppose you have seen these storms cut in the sand hills and the sand hills tumble in and go out?

A. Yes, sir, I have seen it cut away Brigantine, take it out  
195 on the shoals, the hard northwester would shift the sands out on the shoals. Another wind would come and shift it over on the beach, that's the way Brigantine is, down where the Marlborough-Blenheim is.

Q. It took two processes to land the soil from Mr. Smith's home over to Atlantic City, and I expect Mr. Urquhart you have seen those trees up along the inlet in big storms when they have fallen in too?

A. There used to be a bunch of cedars at Vermont that went down, every bit of it went down.

Q. And when the land made up it did not come back in acres but it just came back gradually?

A. It went to the southward.

Q. I don't mean that, but I mean finally the beach commenced to

make up, the point of the beach there commenced to make up, the sand commenced to gather, that gathered gradually?

A. It flattened out you know.

Q. You couldn't tell from day to day how much it gathered?

A. No, sir.

Q. But after some months had passed you could see that it had gathered?

A. Gradually until another storm cut in, and then gradually regained and cut in again with the storm.

— But the whole result has been that the land has gradually gone out?

A. Has shifted and gone to the southward.

Q. But I mean on the point of the beach, of Absecon Beach has gradually gained towards the ocean, the ocean has receded in other words?

A. Yes, it has cut out that way you know and gone to the southward. That piece of railroad from the inlet up to where Vermont Avenue used to be ain't changed a bit, it is just as it was in the old days. The railroad company ain't changed it.

196 Q. They have a lot of stone jetties and things of that sort?

A. Well, they put a lot there but they have all settled away and that's never cut away there.

Q. Then your opinion as I gather is that the land that has made around New Hampshire and Vermont really came from Brigantine?

A. Yes, it comes to the present day because all our cut is over on the east side of the bar where the channel tide comes down and hits it, and the northeast makes it up and the next tide cuts it away and sends it over.

Redirect examination.

By Mr. Carr:

Q. Just a minute, where you saw the trees falling in and the land cut away by storms, was that at the foot of Vermont Avenue or New Hampshire Avenue?

A. Well, it was to the east side of Vermont Avenue.

Q. East of Vermont?

A. And north side of Atlantic Avenue.

Q. But in this section down at the end of Vermont Avenue you did not see the trees being washed away and the——

A. Oh, no.

Q. You never saw those big washouts down there?

A. Yes, if you were down the beach along there you could notice the tide because a cedar tree ain't like anything else, it has so many roots it takes a long while to undermine it.

Q. Well, were there any cedar trees below the lighthouse and towards the beach?

A. Southwards of the lighthouse?

197 Q. Yes.

A. No, sir.

Q. There wasn't anything there?

A. Nothing there.

Q. And in between Rhode Island and Vermont there wasn't anything there, was there?

A. What do you mean?

Q. South of the lighthouse between Rhode Island and Vermont south of the lighthouse?

A. No, sir.

Q. Between Vermont and New Hampshire?

A. No, sir.

Q. So there weren't any cedar trees washed away in that section?

A. In that section there, there wasn't any in my recollection.

Q. And the land that made up made up gradually and was flat was it?

A. Yes, sir.

Q. You didn't see any large amount of earth being carried away there at one storm?

A. Them bars on the low water would fall there according to the rise and fall of the tide, and then on flood tide they would cover up, and on the flood tide, in a big tide when we would come to launch our lifeboat if we were called away we could shove the boat right into the water without using any carriage to cart it or anything.

Q. That's all.

198 Cross-examination.

By Mr. Bourgeois:

Q. Mr. Urquhart, it was not an uncommon thing for a storm to cut in this flat beach, where it was flat a hundred or a couple of hundred feet?

A. On Vermont Avenue?

Q. Well, wherever it was flat. He says the beach was flat—I say—

Mr. Carr: I mean as far as Vermont and New Hampshire.

Q. Well, say Vermont.

A. Well, south of Vermont there was a big flat out there.

Q. Yes, and it was nothing uncommon for those storms to cut those flats away in?

A. No, there is a shoal there yet.

Q. It was easier to cut the flats in than it was the high land, wasn't it, I mean the ocean in a storm would cut more of the flats in than it would the high land?

A. Yes, it would cut it away.

Q. And make up again?

A. Certainly.

Q. Cut away and make up.



Redirect examination.

By Mr. Carr:

Q. Mr. Urquhart, I am talking about the land, the fast land—when I am speaking about its being washed away, did you ever see the fast land washed away in great big pieces down at the 199 foot of Rhode Island, Vermont and New Hampshire?

A. No. Atlantic Avenue was graded up to the corner of the lighthouse and outside to the eastward of that there was nothing—well that never went away you know because it was maybe a couple of hundred feet to the low water mark.

Q. Yes, where I am indicating here on Exhibit D13 south of Pacific Avenue and south of the lighthouse—between those points you did not see those washouts, those large quantities of land at one time?

A. No, sir, that was all beach, all sand beach.

JAMES MILLS, called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Mills, do you live in Atlantic City?

A. Yes, sir, I have lived in Atlantic City ever since I have been a boy thirteen years old.

Q. I think you are the captain of the yacht M. S. Quay?

A. Yes, sir.

Q. Is that a boat that takes out pleasure parties from the inlet?

A. Sir?

Q. That takes out pleasure parties from the inlet?

A. Yes, sir, every day, sir.

Q. And how long have you known the lighthouse section of Atlantic City?

200 A. Well, I have been knowing it about ever since I have been a boy, thirteen years old.

Q. How long have you been sailing in and out the inlet there?

A. Ever since I have been a boy eight or nine years old.

The Court: How old are you?

The Witness: Fifty-seven.

Q. Do you recall the building of the Government jetties?

A. Yes, sir.

Q. In the lighthouse section?

A. Yes, sir.

Q. Did you work on them?

A. No, sir.

Q. There were two sets of jetties built were there not?

A. Yes, sir.

Q. Now, do you know about when they were built?

A. Oh, somewheres about forty or forty-one years ago.

Q. Now, when you first knew the beach there where did the water come with relation to the lighthouse?

A. Well, I tell you, if you take me there, from the foot of Baltic Avenue down to the foot of Massachusetts Avenue I will tell you.

Q. I would like to take you there but I cannot.

A. Well, I will give you the best I know.

Q. You tell me in your own way.

A. Well, when I was a boy about thirteen years old, the foot of Baltic Avenue, the high water mark was about like it is now, 201 and I remember two or three more of us dug caves down in the hills, put stoves in there and made playhouses out of them. Now, how long a time that was, I guess about forty-eight or something like that it commenced to wash in, it washed in, clean up to the railroad tracks, what they call the mule stable that was between Baltic and Arctic Avenue, up to what they call New Hampshire Avenue now. There was no New Hampshire Avenue at that time and from there it went down to the lighthouse yard on the northeast end of it, well not the northeast end but the east end of it, and I have had to throw the sand up there to keep it from going into the lighthouse yard.

Q. Now, was there any Vermont Avenue south of Atlantic Avenue at that time?

A. No, sir.

Q. Was there any New Hampshire Avenue north of Atlantic Avenue at that time?

A. No, sir.

Q. Now, from that point, has the beach at that point made or lost?

A. Well, from the foot of Baltic Avenue down to Royal Palace, the foot of Pacific Avenue I have seen the time since that time that has washed away and filled in in certain places, you understand, then make out again, but from there on the Heinz's pier the beach has been making for the last forty-one years and is further now than it ever was.

Q. Now will you tell us where Heinz's pier is, the foot of what street?

A. Massachusetts.

Q. And that's beyond Rhode Island Avenue?

A. Yes, sir, Rhode Island Avenue you understand is to the eastward of it.

Q. Have you ever known a time when the high water mark was not further than it is now at the foot of Rhode Island Avenue 202 and New Hampshire Avenue?

A. No, never in my life.

Q. Have you ever heard of its being out any further?

A. No, sir.

Q. Do you remember the house that Capt. Timothy Parker built right across here?

A. Well, I remember the time he built the house, but I don't know anything about these new maps. I am here to answer your

questions on the property, I don't know anything at all about the new maps.

Q. You know where the life saving station is?

A. Yes, sir.

Q. Well, Tim Parker's house is right across from the life saving station?

A. I remember that.

Q. Do you remember whether it was on piling or not?

A. That I could not say, I never took interest enough to see it.

Q. Well, do you know where the water came with reference to Tim Parker's house?

A. No, sir, I don't.

Cross-examination.

By Mr. Bourgeois:

Q. Captain, the timber that grew on Absecon Beach was red cedar wasn't it?

A. Yes, sir, red cedars, hollies, briars and everything.

Q. And it was the common thing to set houses on red cedar piling wasn't it?

A. They did.

203 Q. And red cedar was a good deal easier to get down there than brick?

A. Well, there wasn't so many of them till you got down to the beach.

Q. There were plenty on Absecon Beach?

A. Down towards Longport, yes.

Q. Well, there were some, weren't there, up at Vermont Avenue?

A. Well, I will tell you how many cedars at eVrmont Avenue, tell you where they started from.

Q. How many were there?

A. Well, I tell you, there was two hills you understand. One ran from Vermont and Railroad Avenue and the other ran from Vermont and Atlantic down what they call Sharp's — Mr. — was talking about the hills washing away and the cedar trees falling. I stood there many a day and seen them falling myself.

Q. That was during severe storms you would see them fall down?

A. Why, yes, sir, a northeast storm would cut them down, yes sir.

Q. And of course, would cut the other part of the beach as well, didn't just stop right there?

A. Washed it away, yes, sir.

Q. I think that's all, Captain.

Mr. Carr: I think we will resume the regular order unless there are some more ancient witnesses who are anxious to get away.

Mr. Bourgeois: I don't think it makes a bit of difference because if we put our witnesses on and there is anything to rebut that—

204 Mr. Carr: I would like to retain them because something may develop in the testimony that some of these witnesses could throw light on if they knew of it.

These were intended to be in an anticipatory rebuttal.

Defendant rests.

CHARLES F. ATKIN, called and sworn on behalf of plaintiff in rebuttal, testified as follows:

Direct examination.

By Mr. McCarter:

Q. Mr. Atkins, are you connected with the secretary of state's office?

A. I am.

Q. Does the office of the secretary of state contain a series of maps filed by the riparian commission?

A. Yes, sir.

Q. Have you produced at our request a map, I think it is No. 16?

A. No apparent numbering on it.

Q. This if from the——

A. From the files of the office.

Mr. Carr: Are you going to offer this?

Mr. McCarter: Yes, sir.

Mr. Carr: I make the same objection that Mr. McCarter made to the use of ours. This is a lithographed copy of a map. It is not explained in any way. There is no opportunity to cross-  
205 examine the parties who made it, nor is there the story of how it came into being, and it does not appear even that this is an official map except that the riparian commission has adopted and approved of a lithographed map prepared by someone else, it does not even appear that it was done by the engineers of that board. I am quite willing it shall go in if ours goes in, but I don't think there is any different situation.

The Court: For what purpose is it offered?

Mr. McCarter: To show the position of high and low water mark 1552, and to show that the gentleman here yesterday was mistaken.

My understanding of the situation your Honor is this. I understand that official maps made pursuant to law, filed in public places, such as the office of the secretary of state by bodies authorized as this body was to make and file such maps become matters which don't need proof and because they are matters affecting public interest prove themselves. Now the difference between this map and the one that was before us yesterday is this. This is the original map made pursuant to law filed in the place where it is required by law to be filed and produced by the custodian. Yesterday the thing that they produced was said to be a paper on file in the geodetic survey. There was not any authority shown for the making of a geodetic survey, there wasn't any authority shown for the making of such a map and it did not appear that this was part of that and there was nobody produced that gave it any authenticity. It was

a mere scrap of paper from Washington. Now I have always understood the law to be that official documents made pursuant to law and kept in the regular place prove themselves and are admissible without any proof and they affect matters of public interest. This is an old map, and insofar as it shows anything that may bear on this issue is I think both relevant and competent. We therefore offer it.

The Court: I don't think it proves itself except as to matters that the law required it to show. Let me see the act under which it was made (after reference to the act). I will reserve it, I want to look at the question. I will look at it during recess. We will take a recess at this time.

**Recess.**

**Afternoon Session.**

The Court: The general rule as stated by Wigmore, would seem to indicate that the map that is now offered, the riparian commissioners' map and all of the statements therein contained insofar as they were within the authority conferred upon the riparian commissioners by the statute—I am inclined to take the map, that is receive it in evidence, but I will not attempt to say at this time without an examination of the statute under the authority of which the map was made, to what extent it is evidence or for what purposes it may be used as evidence. That is to say whether it can be used for evidence in any other respect than as showing the then water line and the exterior boundary and things of that kind. Now, that leads me back to the condition that confronted Mr. Carr yesterday. I have not any doubt without examining the statute, that the map which he offered to produce, the geodetic survey was made by authority of law and that for some purposes it is admissible under the rule I have just been talking about, that I have just been discussing, and I think I will reserve those two maps in evidence with the same limitation exactly as I received the secretary of state's map unless the objection is—which I am not at all clear about—that it does not appear to have been produced from the files of the authority in whose custody it was in accordance with the provisions of the statute under which it was made. If it should later appear that there was no such statute authorizing its making, why then, of course, the map becomes of no account whatsoever, until there has been some proof—

Mr. Carr: I assume that proof in the form of an exhibition of the statute which authorized the making of such map, if there be such a statute will be all that is required.

The Court: That is just the point. I do not think it is necessary in this court to prove a statute, this court take judicial notice of the laws of Congress and also of the laws of the several states, therefore it is not necessary in order to make these maps admissible as evidence that you should also introduce the statute, and consequently I have got to take them now and later when I have an opportunity to examine the statute, or my attention is directed to them, determine the extent to which these maps are admissible, and the extent to

which they are evidence. Of course, if the objection is as to the defendant's geodetic survey map that they are not proven to have come from the custody of the proper official to whose custody they were committed by law, then I cannot admit them.

208 Mr. Carr: Mr. Bourgeois and Mr. McCarter if the objection is as to the authenticity of this copy I will supply the proper certificate of the department.

Mr. McCarter: I don't think we care anything about that.

Mr. Carr: I did not suppose you did.

Mr. McCarter: No, I have felt and still feel that there is nothing on the map itself that would indicate it has any official position whatever. It simply says that it is taken from the files of the geodetic survey. There may be thousands of things on the files of the geodetic survey that are not papers that the geodetic survey were authorized to make. In other words I don't understand that this is a part of the well known geodetic survey which was undoubtedly an authorized piece of work. It simply says this is taken from the files of the geodetic survey, and if that could be substantiated in any way I shall be content, the fact that you have not got a certified copy, we do not make a point of that.

The Court: Why can we not have as far as this is concerned a statement from the official custodian of those maps as to exactly what they are?

Mr. McCarter: That will be satisfactory.

The Court: And we will hold the receipt of them in abeyance until that is produced. Now this map has been received in evidence, received and marked Exhibit P2.

209 Mr. McCarter: Suppose I have a tracing made and have that marked, later I would like an opportunity to be heard on the evidential effect.

The Court: Depends very much on the statute. I do not want to stop now to examine the statute, it would take probably the rest of the day and keep us here for no purpose.

LEWIS ROWAND, called and sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mr. Rowand you live where?

A. Haddonfield.

Q. What is your age?

A. Eighty-one past.

Q. And by profession you are what?

A. I was a surveyor, I am about nothing now.

Q. I show you a book of notes and ask you if you have seen it before and if you can tell me what it is?

A. Yes, that's a note book of my father, notes on Absecon Beach.

Q. And who is your father, what was he?

A. Jacob L. Rowand, surveyor.

Q. Do you know when the notes were made with relation to Absecon Beach?

A. In October, 1862.

Q. Did you have anything to do with the taking of those notes, I mean the measurements or anything of that sort?

A. I was there assisting my father. I was sixteen years  
210 old at that time and I carried the rod. I was something of a surveyor myself even then.

Q. I will ask you to step around this side, but not yet, just wait a second. I show you a map and ask you if you know what that map is?

A. This is what we would call, or my father called a rough map of Absecon Beach, that is two or three years prior to the dedication of—incorporation of Atlantic City. These are the lines which he ran showing the lands to be conveyed, intended to be conveyed by the different owners, one-half of their beach lands to the Camden Atlantic Railroad Company. The Camden Atlantic Railroad Company found that it was unable to take title to those lands for the reason that their charter prohibited them from holding more than four acres at either terminal of the road, therefore these lands were conveyed to Doughty and Jonathan Pitney during the formation of the Camden Atlantic Land Co.

Q. In other words these owners of real estate on Absecon Beach had entered into an agreement with the Camden Atlantic Railroad Company to deed half of their land, if the company would put a road in there?

A. Yes, of their beach lands. These were meadows over here, we called this the beach land, we called those the beach lands, from the edge of the meadows out to the ocean.

Q. Now, Mr. Rowand you will notice two lines, one along the waves, dotted line, it is not marked on that map, do you remember what line that is?

A. I think that is called surf line. I could tell by the book better. Here is the mark. That's the surf line, here is the mark, range of sand hills, that somebody has put there.

Q. Now, the range of sand hills, what does that indicate,  
211 if anything, with regard to the high water of the Atlantic Ocean?

A. That was a storm tide mark where excessive storm tides would overlap the high water mark and come in over the flat ground to the base of the sand hills.

Q. Now, where was the high water with relation to what you call the surf, if you can tell me?

A. Well, from two to three hundred feet,—surf, you mean low water?

Q. From low water up to high water I mean, how much?

A. From two to three hundred feet. That is daily high water, not storm.

Q. Now, have you ever been in any litigation in our state in which this map and this storm tide line came in question?

A. Yes, several.



Q. What was it?

A. I cannot remember the title of the cases. One was the Haddon Hall.

Q. That was a suit between whom?

A. Lippincott and the other was Seaside, Charles Evans at that time.

Q. That was a suit between whom?

A. Camden Atlantic Land Company to claim this accretion.

Q. In other words the land company had made a conveyance of land to the storm tide line?

A. The land company had made a conveyance of land to the storm tide line in those deeds.

Q. And then when the accretions made up the land company claimed them?

A. Yes.

Q. That was the suit, wasn't it, of Camden Atlantic Land Company against Lippincott?

212 A. That was the Camden Atlantic Land Company against Lippincott, and the other one against—

Q. Charles Evans.

A. Evans. The accretion there in front of Haddon Hall, Mr. Browning did not want to include the Boardwalk, I think we measured out about 1,300 or 1,400 feet from the original storm tide mark.

Q. And do you recall the result of that suit?

A. I think—this is only by hearsay—

The Court: Well, why should we take his version of what the result was?

Mr. Bourgeois: The case is reported.

Q. Now, Mr. Rowand, I notice there is no street system on that map?

A. No.

Q. Do you know who laid down the street system on the map that your father made?

A. Only that I have heard Roger B. Osborne, the engineer of the Camden Atlantic Railroad swore that he or his assistants put those streets upon what you call the dedication map.

Q. Is that dedication map the blue print of which is on the Judge's desk, D9, a reproduction of the map that is now before you insofar as the map is concerned, except only the street system?

A. Yes, sir, there are the same little crosses here in some of these property lines.

The Court: This one he made on Christmas Day, 1852, and that one in October.

A. Yes, father made this as a rough map and it was submitted.

213 Mr. Bourgeois: Well, your Honor please, this was when the survey was made, when they started in to do the work, October 19, isn't it?

The Witness: I think so, just says October '52 sometime, October 19th or 20th.



Q. Now, do you know of your own knowledge if there was land above the high water mark beyond this line of sand hills at the—well the line of land of Chalkley Leeds, when the survey was made in '52?

A. In other words do you mean whether there was a line of sand hills here?

Q. No, whether there were flats along there before you came to high water mark.

A. Certainly between where there were sand hills and the high water mark, flat lands.

The Court: What is the distinction you make between the line of the sand hills and high water are they the same?

The Witness: No, the line of sand hills was the mark of storm tide, because the storm could not cut any further than the sand hill, could not come any further.

The Court: The tide never came up further than the sand hills in the storm?

The Witness: No.

The Court: Now where was the high water mark?

The Witness: Farther out.

The Court: How far?

214 The Witness: Well, I should say it would vary from two to three hundred feet up to five or six hundred feet.

The Court: Out from the sand hills?

The Witness: Yes, sir, from the sand hills out to the high water mark.

Mr. Bourgeois: Oh, I understood.

The Witness: Or in other words between storm tide mark and high water mark it would be a variable distance.

The Court: Now then, how far was the low water mark from the high water mark?

The Witness: Two to three hundred feet.

The Court: Still farther out?

The Witness: Yes, depends upon the slope of the ground, of course, up towards the point of the beach very apt to be more precipitate slope.

The Court: That map does not show the high water mark or the low water mark, does it?

The Witness: Shows the low water mark.

The Court: And that is what, the beginning of those lines?

The Witness: Here?

The Court: That is the beginning of the lines?

215 The Witness: Yes, those lines were intended to represent water.

The Court: But it does not show the high water mark?

The Witness: No, sir, high water mark is not taken in at all, it was the low water mark and the storm tide mark.

Q. Now, Mr. Rowand, I spoke to you a moment ago of Chalkley Leeds' land, can you tell me how that is indicated on the map? Give

the number acres. How many acres in that Chalkley Leeds tract which I spoke of a moment ago?

A. 34.60 acres, this is Barton Leeds.

Mr. McCarter: Where is that with reference to New Hampshire Avenue, does that appear on the other map?

Q. Now, Mr. Rowand, will you turn to this map please, and let us see where that comes. I ask you whether or not the part marked Doughty and Pitney, 34.60 acres tract is the same tract?

A. Yes.

Q. And the easterly line of that tract intersects the low water mark of the Atlantic Ocean?

A. Yes, sir.

Q. About a little more than half way between New Hampshire and Maine Avenue, doesn't it?

A. Yes, sir, about half way between where Maine Avenue would strike.

The Court: Let me ask you one point. On this map, Exhibit D9, which I understand is a replica of what you are referring to, is a piece of ground marked strand. What does that mean?

The Witness: That is beach and flat sand between the base of the sand hills and high water mark.

The Court: High water or low water mark?

The Witness: Well, might take it all the way across if you choose to call it so.

The Court: It would be low water, wouldn't it?

The Witness: Yes, because high water is not shown there. You speak of the beach there as strand.

(Map marked in evidence, Exhibit P3.)

Cross-examination.

By Mr. Carr:

Q. Mr. Rowand, Exhibit P3 in its outline, is it the same as the Atlantic City dedication map, so called Exhibit D9?

A. Yes. There may be a few alterations here in some of these curved lines is all, but the general outline of the thing is the same.

Q. Now the survey made by your father did not include the street work or any of the interior lines did it?

A. Nothing at all, that was done afterwards.

Q. And not done by your father?

A. Not done by him.

Q. Nor by you?

A. No, sir.

217 Q. How long were you down there on the ground with your father when this work was done?

A. A week or two.

Q. You were a boy sixteen?

A. Yes, sir.

Q. I don't suppose you were a surveyor, were you?

A. Well, I had done a little, I was brought right up from infancy in it.

Q. You were learning it?

A. Yes, sir.

Q. And the actual field notes were made by your father, calculations made by your father. You had no part in them except the mere carrying of the rod, is that true?

A. That's all, yes.

The Court: For whom did your father make the survey?

The Witness: Originally intended for the Camden Atlantic Railroad Company, they could not take title to the land, therefore the conveyances were made by these parties to Doughty and Pitney, directors of the Camden Atlantic Railroad Company.

The Court: Yes, I understand, but it was made by him for them, for the Camden——

The Witness: For the railroad company virtually and then it was discovered that they could not take title to the land and it was made to Doughty and Pitney to hold until the Camden Atlantic Land Company had been formed. In the meantime it went through the hands of Isaac S. Waterman who furnished the money.

218 Q. Now, do you know what became of the completed map that your father made?

A. Well, I have seen it in Trenton, in Camden, and I understand. I remember Mr. Abraham Browning impounded it in the Chancellor's Court in this city, it got away from the court house and got into Atlantic City and Kit Ray the clerk at that time discovered it in some man's drawer in Atlantic City. Abraham Browning got hold of it, impounded it, and it has gone back to Mays Landing. I suppose it is there yet.

Q. This blue print which is a blue print made from the tracing of the map recorded in Atlantic County as an original map shows that the original was recorded in 1882. Was it in your or your father's custody up until that time?

A. No, sir, it was not, I think it passed out of his custody in 1852, at the time he made that completed map, I never saw it in his custody afterwards.

Q. And he had nothing to do after that with the lay out of the streets?

A. Nothing at all.

Q. Do you know how long that was done after 1852?

A. I do not. I know there was a good deal of difficulty there with the landowners, they were not willing to give much land for the streets, and finally they decided upon this plan and cross streets 50 feet and I think Pacific Avenue 60 and Atlantic Avenue 100. They were very careful of those sand hills, did not want to give them away, but that was not done by my father, any of the street work.

The Court: You speak of the sand hills, how high were they?

219 The Witness: They were all heights, as high as thirty or forty feet, some of them above the level of the water, sand hills, cedar trees, briars, holly trees, everything on them.

Q. Were there sand hills all along the beach, all the way down to this Steelman Leeds' line—what direction is this?

A. About southwest.

Q. On the southwest part of the land?

A. These sand hills ended somewhere here over towards the meadows.

Q. Well now, look at the blue print map a moment, were there sand hills all the way down opposite the Doughty and Pitney 99.56 acres shown on Exhibit D9, were there sand hills all the way down to here?

A. Yes, all the way down as far as these lands went as far as what is now Cincinnati Avenue.

The Court: Were the sand hills all the way to the inlet?

The Witness: Yes, except one place here they came in around a bend towards the meadows and those would be covered by storm tides. They went to the base of the sand hills every time.

Q. Does your map contain the word "Strand" on it?

A. No, not the rough map, it does not.

Q. Who put the word "Strand" on the map, do you know?

A. Which map do you mean?

Q. Exhibit D9?

A. Well, I suppose my father did, I can not remember all those details.

220 Q. Can you recognize his marking in any way?

A. Well, he would not make that, no; he hasn't written it that way, it may have been written over by somebody else.

Q. No, this is an exact copy of the map on file?

A. I understand this is a copy of a tracing. The man that made the tracing could put his own handwriting on it.

Mr. Ashmead: It is a copy of a tracing.

A. Well, that's a very good representation of my father's signature. He was a good writer Samuel Rowand, December 1852, but when a man makes a tracing he can not always follow the handwriting of the original.

Q. Now, your map does not have the word strand on covering the—

A. This map you mean (P3)?

Q. Yes, covering the Doughty and Pitney 34.60 acres does it?

A. No, sir.

Q. I call your attention to a curved line inside of line marked "Line of outside sand hills" and ask you if you can tell what that line is?

A. No, I can not, I saw that, but I don't know what it is, it does not begin with the line of the outside said hills, neither does it end there.

The Court: Does not appear on the map P3 either does it?

Q. Assuming that it appears——

The Court: No, it does not, he said.

Q. Assuming that it appears upon the filed map in Atlantic County could you say whether or not it was a part of your father's original work or someone else's?

A. I could not.

Q. You have seen that map a number of times, haven't you?

A. Yes, sir.

Q. Do you know whether or not that inside curved line appears upon it?

A. No, I do not, it is not a regular curved line there by any means.

Q. Not an irregular curve either.

A. It is curved there and there it is pretty near straight, it looks as if somebody slipped the pen.

Q. What line was chosen of the sand hills, the base of the hills?

A. Generally the summit. We placed a stick on top of wherever these cross lines would cross the sand hills. We put a stick there for reference. The reason we did that was if it was put down below it would very likely be buried up or washed away.

Q. What was the significance of indicating the line of outside sand hills?

A. Only a memorandum which a surveyor would make to fix his points which he could refer to at any time.

Q. Why would he perpetuate it on the official map?

A. I don't know.

Q. Do you know of any other seashore map in which the line of the outside sand hills was indicated?

A. I don't remember any, I have seen a number of maps of Atlantic City. Some of them have them on, some have not.

Q. You mean they are the lithograph copies of this map?

222 A. No, not lithograph copies from that.

Q. But made up from the data on this map?

A. I suppose so, I can not tell where they got it.

Q. Was this map your father made, the first one of what is now Atlantic City?

A. These lands with the exception of the Chamberlain tract here belonged to Jeremiah Leeds. It was divided up by commissioners I think, in 1840. Now that's the first map I ever saw.

Q. That is the commissioners' map?

A. That is the commissioners' map, yes, sir, a very large one of it somewhere, or gave it to the railroad.

Mr. Bourgeois: Is that one continuous map or several parcels.

The Witness: One continuous map made by John Clement.

Q. Now the space indicated as strand extends to the low water mark, as one boundary does it not?

A. I should say so yes, sir.

Q. And the other boundary is undefined, is that your position?

A. I do not quite understand you, what do you mean the other boundary, the sand hills?

Q. One boundary of the strand is the low water mark, is that correct?

A. Yes.

Q. Then in between that and the line of the outside sand hills is the line of ordinary high tide, isn't that true?

A. No, the ordinary high tide would not reach the base of the sand hills.

223 The Court: No, no, he says between the base of the sand hills and the low water mark is the ordinary high tide mark.

The Witness: No, sir.

The Court: You don't understand.

Mr. Bourgeois: Somewhere between.

The Witness: Oh, it is somewhere between the low water mark and the base of the sand hills.

Mr. Bourgeois: Is the ordinary high water mark.

The Witness: Is the ordinary daily high water mark.

Q. What is the point of defining strand as meaning the point between the line of the outside sand hills and the low water mark, what is the object of defining that territory?

A. No more than the object of calling these salt meadows. That was because that was its name, they called it the strand.

Q. Who called it the strand?

A. Everybody today.

Q. No, at that time?

A. Oh, I don't remember who called it then. There wasn't anybody much there to call it.

Q. At that time the work was all done prior to the laying out of the streets and the word strand was not placed upon the original map Exhibit P3, was it?

A. No, sir.

Q. Do you know how it came to be placed on Exhibit D9?

224 A. My father made that map, experimental map or whatever you please. The work was done and then when he come to make this map he put the additional work on. He did not put it all on here because he did not know but he would have to duplicate that work.

Q. I understand that, but at the time he made up his completed map from Exhibit P3 there were no streets on it?

A. No.

Q. There were no marks on it other than the names of the property owners and all their property lines, were there?

A. None.

Q. Well do you know why on that map he marked the word strand?

Mr. Bourgeois: Well, Mr. Carr, it has not appeared yet that he did mark the word strand.

The Witness: I don't know.

The Court: Let me ask you this.

The Witness: Show me the original paper I will tell you whether he put it there or not.

The Court: On this Exhibit P3 which is the original map you see the words "Line of sand hills and beach," in whose handwriting is that?

The Witness: My father's handwriting "Line of sand hills and beach" here it comes around here.

225 The Court: Was that line made by him?

The Witness: Yes, sir, no doubt it was, not the slightest doubt because the writing is there that is plain.

Q. Well now the marking on Exhibit D9 omits the words "and beach" and makes it simply "Line of outside sand hills." Now is it a fact that this line was the line of the beach as well as the line of the sand hills?

A. Line of the sand hills, this is all beach.

Q. What do the words "and beach" mean as appearing upon Exhibit P3, is it to distinguish it from the sand hills?

A. I don't think it is.

Q. Do you know then why the words "and beach" were placed upon Exhibit P3?

A. I do not know.

Q. Well assuming that Exhibit P3 is correct, this same line would indicate then that it was the line of the beach as well as the line of the sand hills, would it not?

A. Identically.

Q. Now what is meant by the words "Line of the beach"?

A. Line of the sand hills.

Q. Now suppose you strike out sand hills, what would it mean, the line of the beach?

A. I should take it to mean the point where the flat sands began and where the storm tides would come up.

Q. You wouldn't think it had any reference whatever to the line of the ordinary high tide, would you?

A. No, sir.

Q. Why is the importance attached to the line of the storm tide rather than to the line of ordinary high tide?

226 A. I don't know.

Q. In your later experience where you show the high water mark would you not show the line of high water mark, the ordinary line of high water mark, rather than the line of the storm tide?

A. Probably, there are times when we are more particular than we were then. That was a barren waste at that time. We had very little time to do the work and did not go into the minutiae.

Q. Mr. Rowand, you don't pretend to be able today to remember whether there were sand hills all the way along the beach front, that is independently of this map, do you?

A. I say there was, all the way down. I surveyed the beach from one end to the other since that time and those sand hills extended away down as far as Cincinnati Avenue, which is the extreme end of the land company's land. I think there was a place—I can not say just what avenues, where the sand hills back towards the meadows and when the storm tide came it flooded all of those lands, but as for every foot of the ground I cannot say as to that.

Q. Do you mean that there was substantially an unbroken range of hills extending from one end of Absecon Beach, from the easterly end of Absecon Beach to Cincinnati Avenue?

A. With the exception that I mentioned I do, not unbroken because they were all heights with little spaces between them; very irregular.

Q. When did you next see Absecon Beach after you assisted your father in this surveying work?

A. I was there in 1854, the day before the formal opening of the railroad.

Q. On pleasure or for business?

A. Well it was pleasure.

Q. You did not go down and look over the lands there?

227 A. No, sir.

Q. Well I suppose it was a number of years before you had occasion to check up this surveying work, wasn't it?

A. I never checked it up at all. Whatever we have done up at the upper end of the beach has been in relation to streets, with the owners of the United States Hotel, the Chamberlain tract.

Q. How long—was that when that was made?

A. Several years, four or five years. Didn't have any occasion then to know the high water mark or beach front conditions, nothing but the street work.

Q. Did you ever have occasion as surveyor or engineer to note the beach front conditions for a period of twenty or twenty-five years after this map was made?

A. No, only as regards those two suits that have been mentioned, the land company against Lippincott and against Evans.

Q. And when were they?

A. Well, I don't know what years they were.

Q. Some fifteen or twenty years ago, about?

A. Longer than that I think now—it was after the Haddon Hall and the Seaside had been moved from the original location over the accretions, down to the seaside, the ocean.

Q. Now you made no attempt to locate the line of ordinary high water, did you, when this survey was being made?

A. I don't remember that we did.

Q. Nor did you attempt to make an accurate location of the low water mark, did you?

A. We tried to, but the best we could do, we could not—every line we ran out there we could not wait for the tide to go down and in straight beach front it would be about a uniform—

228 Q. Didn't take levels, did you?

A. No.



Q. To determine accurately requires a series of levels to be taken.

A. I shouldn't think it would, but it might.

Q. To get the average ordinary——

Mr. McCarter: Are you talking about low or high now?

A. The high water mark is there, the low water mark depends upon other things, varies from day to day.

Q. At the time this survey was made the high water mark was regarded as of much consequence, was it?

A. No, sir.

Q. Nor was it regarded as very important to accurately locate the low water mark on the beach front, was it?

A. No, couldn't do it accurately.

Q. As a matter of fact the value of the beach front at that time was not appreciated, was it?

A. No.

Q. The more desirable property was considered to be away from the beach, wasn't it?

A. Yes.

Q. How much time did you spend along this corner where New Hampshire Avenue and Vermont Avenue now is, that would be the Doughty and Pitney or 34 acre tract appearing on Exhibit D?

A. I could not tell anything about that now. Remember that has been sixty-five years ago.

Q. Well you don't suppose you spent a full day on that particular 34 acres, do you?

A. In surveying the whole 34 acres?

229 Q. No, on that particular part of the 34 acres?

A. No, sir, I don't think we would.

Q. The chances are you would not spend more than an hour or two so far as the beach front was concerned?

A. Probably not that long.

Q. How would you spend running that line?

A. I should think the width of that strip, one hour would give all that we wanted out on that edge, less time.

Q. And there was no reason at that time why you should observe the high water mark?

A. No reason why, no, sir.

Q. As a matter of fact you personally did not observe it, did you?

A. No, sir.

Q. And isn't it somewhat of an assumption that it was only the storm tides that reached the foot of the sand hills on your part?

A. I have been there a great deal, I never saw the ordinary tides reach the foot of the sand hills.

Q. Have you been up in this section a great deal?

A. Not lately.

Q. I didn't ask you that.

A. Oh, why yes, I have been there a great deal.

Q. How often have you been up?

A. Oh, I don't know, perhaps three or four hundred times.

Q. In this particular section?

A. All the way around there, I can not just specify that one spot, I could not pick it out on the ground today.

Q. You could not?

A. No, sir.

Q. Well now let's see when did you next go there after 1852?

230 A. As I remember in 1854.

Q. That was a pleasure trip?

A. Yes, sir.

Q. Now when did you come there next after 1854 and go up to this section of the beach in dispute?

A. I can not tell you.

Q. Was it a matter of five or six years?

A. Don't know, I was there nearly every year I suppose.

Q. But you were there on pleasure.

A. That's all; I have done no surveying since my father did that part of the beach.

Q. You had no occasion to observe that section of the beach after this survey was made?

A. No, sir.

Q. You know nothing about the changes that occurred from that time on, do you?

A. Only I know that this point was washed away, the shape of the beach, I can see that very plainly.

Q. You remember when it had washed nearly up to the lighthouse?

A. I remember seeing water up to the lighthouse, I don't know when.

Q. You don't know when it was washed away, you did not see the process, isn't that so?

A. Yes, sir.

Q. You really haven't had a chance to again observe the position of the high water mark, since you helped your father as a boy to make this survey?

A. No, sir. That was his work, not mine.

Q. You were not responsible for it, were you?

A. Not at all, he was supposed to be an accurate and a reliable man.

Q. When did you become a surveyor?

A. I don't know.

Q. Just grew up?

231 A. Grew up with it, yes, sir, I did not go to learn my trade while I was at school.

Q. I think that's all, Mr. Rowand.

Redirect examination.

By Mr. Bourgeois:

Q. Mr. Rowand, your father did this survey for the Camden Atlantic Railroad?

A. Yes, sir.

Q. Roger Osborne was what, was he a draughtsman or engineer for that company later?

A. He was the engineer and director.

Q. Later—

A. Afterwards built the road.

Q. And it was his work that put the street system on?

A. Yes, sir.

Q. And you say that was how long afterward, extended over period of what time?

A. Must have been a couple of years. There was discussion amongst the owners as to how much should be given, where streets should be laid.

Q. There is a certificate on this map I think showing the rail company completed it in 1854. Is that probably the time when he completed the street system?

A. I don't know, I can not tell you.

Q. Now, Mr. Rowand, I notice in your note book here the following language. I am going to read it to you because I can read better than you can. "Absecon Island Beach, October 19, 1852. Commenced running October 20, 1852." And then I notice a few pages back further the following "Absecon Beach, Rev. Notes, October 21, 22 and 23." Then starts off on "Robert Bartlett Leeds, same land, beginning and so forth." Are those the dates on which this survey was done?

A. Yes.

(Objected to.)

Q. Tell me whether that memorandum is in your father's handwriting, where it says October 19th or where it says October 20th?

Q. Now I notice in here the following language, under Ruhama Conover. Who was Ruhama Conover?

A. I think she was a daughter of Jeremiah Leeds' first wife.

Q. I notice in part of this "Jeremiah Leeds and six children: Millicent his widow. Judith Hackett, Chalkley S. Leeds, Robert Leeds, Ruhama Conover, Rachael Steelman, Andrew Leeds. That the same Ruhama Conover, is it?

A. Yes, I think so.

Q. Now I notice at the bottom it reads as follows: "Ruhama Conover north  $60^{\circ} 39'$  east 8 feet to the left 3.884 feet to post surf, south  $26\frac{1}{2}^{\circ}$  east." Then it says: ten and fifteen apparent meaning I judge ten—

A. Ten chains, fifteen links.

Q. "To storm tide." Then I notice at another place, "Second south  $20^{\circ}$  east 21.88 chains to stake on left sand hill." I think that left—"32.15." Then—"to surf 34.15 along surf—" that would indicate from the sand hills to the surf at that point there was a difference of two chains, is that right?

A. 34—two chains, yes.

Q. (Continuing:) On sand hill 34.15—to surf 34.15.

233 Mr. Carr: If this is going in the record I don't know whether he is making an offer of this book or not, if you are—I am going to object to it, I don't see that the book is evidential.

Mr. Bourgeois: What I am trying to show is that Mr. Rowand was right when he said he went to the top of those sand hills. This contains reference to that very thing.

The Court: The witness can use it to refresh his recollection if he knows that at the time it was made it correctly set forth the conditions therein stated.

Mr. Carr: I would like to examine him about it, I don't think it ought to go in the record as evidence in the shape it is now. Mr. Bourgeois read a number of questions, and unless the book is admissible——

The Court: He is reading it, Mr. Carr, instead of having the witness read it because his eyesight is poor.

Mr. Carr: Yes, but I want to see if he can refresh his recollection as to this book.

Cross-examination as to book.

By Mr. Carr:

Q. Mr. Rowand, the book from which Mr. Bourgeois has been reading was a book in which your father made the entries?

A. It is.

Q. And when did the book come into your possession?

234 A. I suppose you might say after his death.

Q. Which was when?

A. 1880.

Q. And it was in his custody up until 1880?

A. He may have loaned it to somebody in the meantime, I mean it was there at the time of his death.

Q. But you didn't have it in your custody until 1880, did you?

A. Well it was in both of our custodies, we both occupied the same office and I could take the book any time.

Q. When did you first have occasion to refer to the entries that appear in this book so far as they relate to the territory in dispute in this suit?

A. Well I think in the trial of the case before Judge Walker.

Q. That is 1912?

A. I don't remember the year, 1912, I think, about five years ago.

Q. Then you had no occasion to refer to those entries from 1852 to 1912, had you?

A. No, sir.

Q. You did not see the entries when they were made?

A. My father was back yonder making the entries and I was on ahead.

Q. I mean you had no occasion to read the entries when they were made?

A. Certainly not.

Q. As a matter of fact you did not read those entries until 1912?

A. Well I can not say about that.

Q. You have no recollection about that?

A. No.

Mr. Carr: If your Honor please I shall object to the use  
235 of the memorandum. He did not see the entries made, he  
did not know what entries were made, did not refer to the  
entries until some sixty years after they were made.

The Court: All right, maybe Mr. Bourgeois doesn't want to use  
it any more, do you, Mr. Bourgeois? Mr. Carr objects to the wit-  
ness' use of it because he did not see the entries made and never  
had occasion to ascertain whether they were correctly made or not  
until some sixty years afterwards.

Mr. Bourgeois: We are not going to consume time over it.

Direct examination (resumed).

By Mr. Bourgeois:

Q. Now, Mr. Rowan, you have been asked about measuring to  
the low water mark and not to the high water mark. Can you tell  
me whether or not all of the conveyances at that time, that is in 1852  
and 1860 made in Atlantic City by Chalkley Leeds and Chamberlain  
ran to low water mark?

Mr. Carr: I object, he was only a boy of sixteen in 1852.

Mr. Bourgeois: I know and I am not that old because I have  
searched the records enough to know.

The Court: How will he know?

The Witness: I don't know, if that will settle it for you. I can  
tell you something about some of the others down there made  
236 by the land company. Some of those were made to storm  
tide, some was made to the Atlantic Ocean.

Q. I think that's all.

Cross-examination.

By Mr. Carr:

Q. You only have an opportunity of measuring the low water  
mark for about fifteen minutes during the day, isn't that so?

A. I think that on the Atlantic Ocean there is no such opportunity.

Q. Wasn't any opportunity to measure the low water mark, was  
there?

A. No, sir.

Q. Then it was more or less a matter of estimate?

A. Yes, sir, after you ran down that, yes.

Q. That would be because the low water mark would be only ex-  
posed during the change of the tide, isn't that so, while the high  
water mark would be visible because it would be exposed all the  
time, isn't that true?

A. Yes.

Mr. McCarter: Your man that made the map says there is no such thing as high water mark.

Q. You say about six days was spent in making this whole survey excluding the location of the interior lines shown on Exhibit P3, isn't that so?

A. I don't remember the number of days. That work was gone over pretty rapidly.

Q. It was probably completed in a week, wasn't it?

A. I think so, yes.

Q. Now a good part of that time was spent in the running of the interior lines, was it not?

A. I suppose so.

Q. You don't suppose you spent as much as three days along the beach front, do you?

A. The work down along the beach front would be when these lines were run out. Those would be measured across; here was all the work and here's where all the briars were.

Q. Well, you wouldn't spend as much as three days in running the low water mark, would you, around that whole tract?

A. Wouldn't spend any time in running the low water mark. The distance to low water mark was made by measuring down from his stake on the sand hills.

Q. At two or three points?

A. Well wherever the property line came to the beach.

Q. Then there wasn't any definite running of lines by surveying along the beach front, was there?

A. Not there, I don't think there is around by the inlet.

Q. Do you suppose as much as one full day was spent on the actual surveying of the lands along the ocean front?

A. I cannot tell, sir.

Q. Well in the nature of the work would there have been more than a day spent?

A. You mean the whole length of the beach there?

Q. Yes.

A. I suppose there would if we had run longitudinally with the beach.

Q. But there wasn't any line run longitudinally with the beach except as it marked the points—the corners of the division line, isn't that true?

A. That's so.

Q. So that for two-thirds of the front at least there was no actual survey to indicate either the high water mark or the low water mark?

A. Running along this way, no, sir.

Q. No longitudinal survey. Now can you say positively whether or not there was an actual survey around the bend and which would cover the end of the Chalkley Leeds tract shown upon Exhibit P3?

A. Where we ran around here?

Q. Yes, whether any survey was made, or whether what you did was to indicate the lines of division and then estimate the location of the—

A. We took the line of division and marked it there sand hills.

Q. Then there wasn't any longitudinal survey made along the beach front at all, was there?

A. That's on the inlet side?

Q. I mean on the ocean side?

A. No.

Q. Am I correct in saying that?

A. I don't remember.

Q. You don't remember any?

Mr. Bourgeois: No, he didn't say that.

Q. Well I will say, do you remember any?

A. Any what, any survey run there?

Q. Yes.

A. Around this way no, I do not.

Q. Is it your best recollection that there was no such survey?

A. No, I cannot say that either.

Q. As this work was being carried on, its principal object seeming to be to locate the lines of division between the various  
239 parties in interest, would there have been any occasion for a survey to show the lines of the ocean front?

A. I don't think there would.

Q. Then isn't it your best recollection and your best judgment that there was no such survey?

A. I don't think there was.

The Court: Don't the lines of the individual owners show the length of those lines?

The Witness: Yes, then following the ocean comparatively straight lines between the points—they were so near together.

Q. Now I note the word "strand" occurring upon Exhibit D9 in two places, have you any means of defining that term from any information imparted to you by your father during the course of the work?

A. Not from him I haven't, as to what he meant by strand.

Q. And your definition of it as indicating the line from the sand hills to the surf is your own definition, is that so?

A. Yes.

Q. And is simply your deduction from the word itself, isn't that so?

A. Only that strand was in general use indicating the beach front.

Q. Well what would they call it where there wasn't any sand hills would they call it strand just the same?

A. I don't know.

Q. Does the strand require that there should be a background or frontage of sand hills?

Mr. Bourgeois: He did not use the word strand, how can he give the meaning?

240 Mr. Carr: He has defined it.

Mr. McCarter: That was on cross-examination he defined

Now I don't think he is subject to argument about it, he did not use the word.

The Court: That is your meaning of the word strand?

The Witness: That was the difference between the storm tide mark and the ocean.

Q. Well where there is simply a beach without sand hills is the place on that beach and down to the surf the strand?

A. I have never seen such a beach as that.

Q. Never seen a beach without sand hills?

A. No, sir, not an original beach, I have seen improved beaches without sand hills.

Q. You had no way of determining where the line of the storm tide had come, did you, in the hour or two that you spent on this particular property?

A. Anybody could see by the debris where the storm tide came to, washed up to the base of the sand hills.

Q. How could you tell whether or not that was the ordinary high tide?

A. It was the line when I saw it.

Q. Doesn't the ordinary line of high water make its mark on the beach in the shape of trash?

A. Yes.

Q. Doesn't it make a perceptible mark?

A. The sand was there—above that it was dry, between that and the base of the sand hills.

Q. In some cases you find the sand hills back from the water half a mile or a mile, don't you, and a long flat beach?

A. Yes.

Q. Now is that strand all the way back to the hills?

A. No, sir.

Q. What would that be?

A. An ordinary storm probably would not flood that space and would call the little ridge along that as the storm tide line, ordinary storm; an extraordinary storm would flood that land.

Q. But strand would mean then a space flowed by the tide, whether it is storm tides or high tides or ordinary tides, isn't that so?

A. Yes.

Q. That is the word strand is associated in your mind with the land flowed by the tide, whether it be ordinary tide or a storm tide, isn't that true?

A. Well not altogether true. As I say in that case where the sand hills were half a mile back from the shore, from the ocean there would be a line where an ordinary storm tide would not overflow. An excessive storm tide would overflow that and run back to the base of the hill.

Q. But your strand then would be to the line of the ordinary storm tide?

Mr. McCarter: Not his definition, you are trying to accommodate his definition to the map. I don't think he should be asked to do that because he did not put the word on the map.



The Court: He has attempted to say what the word "strand" meant on the map. Now then the purpose of this examination is to find out whether the explanation given by him as to what he thinks it meant on the map is a correct one, or whether it is not, and the exact limitations of it and what not.

242 (Question repeated.)

A. Now as to what the word strand means by my father I don't know. He wrote that there sixty-five years ago and he gave me an explanation at the time of what was meant by strand, I think; I am only testifying here as to the correctness of that word by him not by what he meant.

Q. Then it is more or less speculative as to what it really means in your mind?

A. Yes, I suppose the dictionary would help us out very much in that matter.

Q. Do you know that Webster's Dictionary defines it as the space between the high and the low water mark?

A. I do not.

Redirect examination.

By Mr. Bourgeois:

Q. In a word Mr. Rowand, your understanding of strand is that part of beach between the storm tide line, and the line of the low water mark in which nothing but coarse grass will grow?

A. The level space.

Q. Part of it is above the high water mark, part of it is below the high water mark?

A. Yes.

Q. Now is that the understanding that people generally along the ocean front have of the word strand?

A. So far as I know it is.

The Court: What is this on this Exhibit P3?

Mr. Rowand: I see a line at the extreme left end of the  
243 map, sort of faint line drawn inside of the number of water lines.

The Witness: I should suppose that was a continuation of the line of sand dunes.

The Court: That cannot be so; there is the line of sand hills.

The Witness: Oh, yes, here it comes here. Looks to be as if something was put on there and then changed, because there is the mark, the dots where it has been run by an instrument you see, course has been taken between the two.

By Mr. Bourgeois:

Q. Now Mr. Rowand, in measuring down these lines you say you would measure to a stake, then from that stake down to the low water mark?

A. Yes.

Q. Now how would you determine what was the low water mark, practically just how do you do it?

A. Well my father did that work, I don't remember, I don't just—how he got at it now, cannot tell.

Q. Do you recall if he had rubber boots on?

The Court: You are leading him.

A. (Continuing:) Don't think they wore them in those days, I think that's a subsequent invention.

Q. Well do you know this—I am asking him to refresh his memory. Do you know if he walked out into the surf to where he thought the tide would be in the event there wasn't any swell there, and measured from that point up?

(Objected to.)

244 A. I am pretty sure he didn't, at least I didn't see him do it. He could assume that just as well from the shore as he could out in the water.

Q. I think that's all.

JAMES W. LEE, called and sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Captain, you live where?

A. Ocean City.

Q. And you are how old?

A. In my 73rd.

Q. How long a time have you lived along the ocean front?

A. I have been acquainted with it all my life, but I lived in Ocean City about thirty-six or thirty-eight years.

Q. What is your understanding of strand?

Mr. Carr: I object. I don't think this man is skilled as a lexicographer. I have live along the shore quite a while myself, but I don't pretend to be skilled in definitions. Proximity to the sea I don't think qualifies a man in the definition of words.

The Court: The word may be given a meaning there that would be possibly slightly different than given somewhere else. I think a person in a community where the meaning of a word is in controversy could testify as to what the meaning generally was of that word in that community at a given time, and that that would then show with some degree—would be some evidence that the word was used in the instrument or what not in controversy with that meaning at that particular time. It is not what he means now as to what the meaning of strand was, but what it was back in ancient days to speak.

Mr. Carr: How is was so considered down there at that time.

The Court: Yes.

Q. How old are you Captain?

The Witness: Seventy-three, nearly.

The Court: And you have been at Atlantic City how long?

The Witness: I have been at Ocean City, that's the next beach below just across the inlet.

The Court: How long?

The Witness: I have been there in Ocean City ever since the first house was built, thirty-eight years, acquainted with the beaches long before I was there, even; lived in Atlantic City when what you call the jetties was made, lived there three or four years, lived there at the time they was built.

Q. Well now, when you first became acquainted with the beach and beach land and became acquainted with the word strand, what was the meaning that was applied to that word by people in that vicinity, that is along the beach?

246 Mr. Carr: I object to that unless the time is fixed. This map was made in 1852, and it is the current use, the secondary or peculiar definition it may have had down there in 1852 among people who lived on Absecon Island, if there was anybody living there.

The Court: He says he has been there how long, thirty-six years.

The Witness: Yes, sir.

The Court: Where were you before that?

The Witness: I was on the beach all my lifetime, going to and fro, going down the 4th of July and various other day along the beach when I was a boy.

The Court: Sixty years ago?

The Witness: Yes, sir.

The Court: Did you ever hear people in those times speak of the strand?

The Witness: Always spoke of the strand.

The Court: Now what was the meaning?

The Witness: In fact we did not know of it by any other name but the strand.

The Court: When people spoke of the strand at that time, what did they mean?

The Witness: All that piece of property that was bare  
247 when the tide was down, between the foothills and the ocean.

Q. In other words from the foot hills to the low water mark was the strand?

A. Yes, sir.

Q. That included the land between high and low water mark and also that flat land above high water mark to the foot of the hills to the storm tide?

A. The flat land above high water mark, or above the ordinary high water mark, what we call neat tide—then a storm tide came over that up to the foot hills so it made it all strand. Sometimes it

would grow up in little weeds and grass during the summer. In the winter time they would be washed away. We all called it all strand.

Q. Now have you ever had any occasion to study the effect of the inlets?

A. Yes. They seem to be constantly changing, so does the front.

Q. Now tell me how those inlets change, does the channel change in those inlets?

A. Yes.

Q. Are you familiar with Great Egg Harbor Inlet?

A. I am, I remember when it was all water where the gardens are now built up.

Q. That's Ocean City?

A. That's Ocean City, I remember when Longport extended down to the one channel and was a big lot of land around here, as much as a mile and a half from where the boat landing is now to the inlet, big high hills which have all been washed away.

Q. That's on the Longport side?

A. That's on the Longport side.

Q. You say that's all washed away?

48 A. That's all washed away, the inlet is as wide again as it ever was.

Q. What about land on the northern end, the Ocean City Beach?

A. That's all made up.

Q. How many acres—that's what you call the Garden tract?

A. That's a big lot, there are five hundred houses on it I expect.

Q. Now you say that the channel shifts. How does it shift, south or north?

A. It generally works northerly a while then it will break out slow and then move—the other channel moves in and another one breaks out above and they fill up. There were three channels across between Ocean City and Longport when I first went to Ocean City.

Q. Now what was the effect when the southerly channel closed in Ocean City?

A. Moved towards Longport.

Q. That is the land made up on the northerly end of it?

A. And moved towards Longport.

Q. What was the effect on Longport?

A. Washed it away.

Q. The same as between Brigantine and Atlantic City?

A. Same thing.

Q. Is that also true down at Townsend's Inlet?

A. I am not so well posted down there but I think it is true, I'm not posted down that way.

Q. Did the Government build any jetties at the end of the Ocean City beach?

A. Oh yes, moved the house away when it washed in.

Q. But you didn't have any jetties out there?

49 A. Did not, no.

Q. Simply the channel changed?

A. The channel changed of its own accord.

Q. The beach washed away from Longport and landed on Ocean City beach?

A. That's what we all say.

The Court: Well is Longport to the south?

The Witness: Just north.

The Court: Then it moves from Longport over to Ocean City?

The Witness: It moves from Longport over to Ocean City.

Mr. Bourgeois: Exactly a reproduction of Brigantine and Atlantic City.

The Witness: It depends your Honor on the condition of the winds. If you have numerous northeast winds it creates a current running down the beach, then the sand will wash off the north side and go over on the south side. Now if they are the prevailing winds for three or four years, which you know is the case, sometimes, then if the wind prevails from the southwards all the time it starts a current. Then it may run back. Now it altogether depends on what kind of winds you have. If you can tell me what causes all this shifting of snow storms around a barn or a house I can tell you what causes changes of sand, it is just like the snow bank, goes where the wind and tide takes it.

250 Cross-examination.

By Mr. Carr:

Q. What's your business Mr. Lee?

A. At the present time?

Q. Yes.

A. I keep a store.

Q. At Ocean City?

A. Yes, sir.

Q. Where did you live in 1852?

A. In 1852, well I was very small then you know, I was born in '45.

Q. Eight years old?

A. Seven in '52.

Mr. Bourgeois: We had a man remembered the high water line when he was seven years old.

The Witness: Well I couldn't remember that.

Mr. Bourgeois: Well he wasn't our witness.

Q. Where did you live in 1852 when you were seven years old?

A. A place called English Creek right on the river that goes into the inlet, goes up into the country five or six miles back from the beach.

Q. Back from where?

A. From Ocean City back on the river.

Q. How far away from the north end of Absecon Island would that be?

A. Well about nine miles I think it is from the beach up to Absecon.

Q. That's back in the country?

A. I was back in the county. Of course cross country wouldn't be much further.

251 Q. When did you live back in the country there, English Creek?

A. I lived there until I was about somewheres near—or some time about 1870, then I went to Tuckahoe.

Q. Until 1870?

A. '68 I think it was I went to Tuckahoe.

Q. That's 18 years after '52 you lived over on English Creek?

A. Yes.

Q. And then you moved to Tuckahoe?

A. Then I moved to Tuckahoe, that's on the same river,—not on the same river, the river forked.

Q. That's also inland?

A. That's inland, that's about nine miles inland or ten.

Q. How long did you live at Tuckahoe?

A. About ten years.

Q. That was about 1880?

A. Yes, sir.

Q. And may I ask when you got over on the strand at all, when you went?

A. I used to go down there three or four or five times a year, beach parties.

Q. Let's get at when you went down there. Up until 1880 you were living on the mainland.

A. No, I left English Creek in 1868, I think about that, '67 or '68, somewhere about that, I can not remember exactly, and then went to Tuckahoe and lived there ten years which would make '77 or '78. But in the meantime, the latter part of the time I lived at Tuckahoe I went to Atlantic City two or three times a week with truck. Then I moved to Atlantic City.

Q. When did you move to Atlantic City?

A. 1878, right from Tuckahoe, '77 or '78.

252 Q. How long did you live over there?

A. About somewheres two and a half or three years.

Q. Now you didn't hear the folks over in Tuckahoe defining the strand, did you, in 1852?

A. When I went on beach parties with them, which I did, we all talked about the strand, those that went on the beach parties, it wasn't talked of among the public, but when we went down there everybody talked of going on the strand.

(Question repeated.)

A. I don't know that I did so far as the individuals there were concerned, only when we went in parties we spoke about the strand.

Q. Did you go over there as early as 1852 with beach parties?

A. Well I can not remember whether I was over there in 1852 or not, I was only about seven years old, I don't think I did. I might have went with my father, I don't remember that.

Q. When is your first recollection of going over with a party?

A. When I was a young man running around among the

Q. You were more than eight years old then, weren't you?

A. Yes, sir.

Q. Now it wasn't until then that you began to hear people about the strand?

A. Well somewhere about that time,—I can not remember when I heard it called before, but when we went to the beach we would speak of going up to the hills, change our clothes and go out on the strand.

253 Q. Took a swim?

A. Yes, we had no bath houses in those days, we used the beach hills.

Q. Well now, did you hear anybody say that the strand was the space between the low water mark and the line of the ordinary storm tide on those occasions?

A. Not in those days, no sir.

Q. In fact the boys weren't talking about things like that when they were on these parties?

A. No.

Q. Now whom did you hear defining the strand with the same accuracy that Mr. Bourgeois defined it a few minutes ago?

A. I never heard it, any reason why it was called the strand. I never heard it defined any more than it was a common use to speak of this flat piece of ground I described as the strand, either there or anywhere else along the river where there was a flat sand called it strand.

Q. Did you ever hear it defined as the space between the low water mark and the line of the ordinary storm tide until Mr. Bourgeois asked you the question in the court today?

A. I think not, because I tell you in those days we didn't bother much with low water marks because they are movable. Nobody could establish a low water mark, nobody can establish a high water mark. You may establish a storm tide mark up around the hills where the storm tide don't come more than once or twice a year, perhaps two or three years at a time, all other lines you establish are movable, today and out tomorrow, you can not establish them, you have to guess at them, that's all.

Q. You guess at the low water mark?

A. You guess at them all.

Q. I think that's all.

254 Mr. ASHMEAD, recalled by the plaintiff testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mr. Ashmead, I show you a small tracing and ask you if you know by whom that was made?

A. Made by myself.

Q. From measurements made on the ground?

A. From measurements made on the ground.

(Sketch marked in evidence Exhibit P4.)

Q. Now referring to this map which is Exhibit P4, I ask you what in addition to the street system it shows?

A. Shows the locus in quo in this case as I understand it and high water mark October 6, 1917.

Q. And also——

A. The Boardwalk as it now exists on the ground.

Q. Now it shows the easterly line of the Bartlett grant?

A. Yes.

Q. It does not show the westerly line?

A. No, only the one line.

Q. Can you tell me whether or not the westerly line crosses any part of the locus in quo colored pink?

A. It does not.

No cross-examination.

255 CLARK S. BARRETT, called and sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mr. Barrett, you are the assistant secretary of the South Jersey Title Company, are you not?

A. I am.

Q. Have you for me made an investigation to learn in what plots—I mean what courses the lands lying south of Pacific Avenue and westerly of—well, I guess all the way down to Missouri Avenue have been sold?

A. They have been sold in parcels running at right angles to the avenues in practically every instance.

The Court: What avenues?

The Witness: That is to Atlantic Avenue, Euclid Avenue, Pacific, Dewey Place, New Hampshire Avenue.

Q. And all the cross avenues?

A. Yes.

Q. Do you know if some of the land in the section south of Dewey Place and south of Oriental Avenue and easterly of Vermont Avenue have been made by accretions?

Mr. Carr: Does he know?

The Witness: Not by personal knowledge.

Mr. Carr: I think that's as far as you can go.



256 Q. And you have heard that they have?

(Objected to.)

A. Yes.

Mr. Bourgeois: Well I want to predicate another question on it.  
The Court: It is not any proof.

Q. Now have the lands that are included in those lands that you understand have been made by accretions, have they also been sold parallel with those avenues?

A. Yes.

The Court: You don't mean parallel, at right angles?

The Witness: Well either at right angles or parallel.

The Court: Right angles to the avenues running east and west and parallel to those running north and south approximately.

The Witness: Practically that way, yes, they are all in rectangular lots.

Q. Now Mr. Barrett, have you made an investigation to learn how many titles there are, how many conveyances there have been of land lying south of Oriental Avenue and east of Vermont Avenue and south of Pacific Avenue and east of New Hampshire Avenue?

257 (Objected to as immaterial and irrelevant.)

Mr. Bourgeois: I am going to show if your Honor please, how many conveyances there have been there of these lands for the purpose of showing how the people themselves have determined the accretion land.

The Court: I don't see how that can determine it.

Mr. Bourgeois: We are going to contend that it can, that is the object of the proof.

The Court: Well your title doesn't run at right angles.

Mr. Bourgeois: Well yes, ours runs at right angles too.

The Court: How, here is your line.

Mr. Bourgeois: It doesn't run that way; that's what they are trying to make it; there is our land (indicating).

The Court: I understand that this piece of property here that now indicate is the Bartlett grant that you claim to own?

Mr. Bourgeois: Yes.

The Court: In some part of that property is property which defendant claims to own?

Mr. Bourgeois: Yes.

258 The Court: Now the part of the property which defendant claims to own of your piece of property is east?

Mr. Bourgeois: East of New Hampshire Avenue.

The Court: East of the right angle that there would be from Pacific or Oriental Avenue?

Mr. Bourgeois: This is our claim: We say that we have 190 feet here, and that it went right along that avenue, right down, and therefore this riparian grant here does not affect our title. We have that by accretion, the accretions followed that street right straight down

The Court: Wait a minute, I am mistaken, this Bartlett grant is their grant, I see I am mistaken. You claim that you own up here?

Mr. Bourgeois: That's right, we own up there and the accretions made right straight down. We say we are entitled to them, they say we are not; we don't claim any rights by riparian grant.

The Court: I don't know anything about the case. I will take the testimony subject to your objection.

(Question repeated.)

A. I have counted the conveyances that have been made of the lands lying between Pacific Avenue, New Hampshire Avenue, and the inlet, and I find there have been 106 deeds placed of record affecting those lands. I have not actually counted the number lying between Pacific and New Hampshire, Vermont and the Atlantic Ocean.

259 Q. Between Oriental, have you counted between Oriental and the beach?

A. No, I have not actually counted them.

Q. Can you tell me how many there are approximately?

Mr. Carr: My objection goes to the whole line.

The Court: Yes, I understand.

A. Yes, there would be at least two hundred.

Q. Now Mr. Barrett then how many of them do you say do not run parallel with one or the other of these streets, either the main street or the cross street?

A. About three or four.

Q. And they are lands that follow out on some riparian line?

A. Yes.

Q. Have you made an investigation to find out how many mortgages there are on those two blocks of land?

A. Yes.

Q. How many are there?

A. On the block between Pacific and South New Hampshire there were seventy mortgages that have been placed since about 1900.

Q. And on the other block?

The Court: What do you mean the other block?

Mr. Bourgeois: Between Vermont and New Hampshire south of Oriental.

Mr. McCarter: I can not understand what he means by between Pacific and South New Hampshire.

260 Q. South of Pacific and east of New Hampshire?

A. Yes.

Q. Now I want to know between Vermont and New Hampshire south of Oriental?

A. About 85 I believe.

Q. And how have the descriptions of those mortgages run?

A. They practically all run at right angles to the street.

Q. Can you tell me what is the amount of the mortgages that

have been placed on the blocks south of Pacific Avenue and east of New Hampshire?

A. Why they aggregate \$573,957.

Q. And what is the aggregate on those south of Oriental between Vermont and New Hampshire?

A. I have not the exact figures on that Mr. Bourgeois.

Q. Now take the block immediately north of Pacific Avenue and east of New Hampshire, do you know how many conveyances there have been in that block?

A. Yes, there were about 102.

Q. How were they, the description of them, how did the description of them run?

A. Practically every one runs at right angles to the streets.

Q. Do you know if there are any mortgages placed on that block?

A. Yes, there have been a great deal of mortgages there.

Q. How many are there, if you remember?

A. Mortgages placed since about 1900 aggregate \$1,430,000.

The Court: Where is that block?

Mr. Bourgeois: That is the block immediately adjoining Pacific and easterly of New Hampshire.

261 The Court: And northerly of Oriental?

Mr. Bourgeois: No, northerly of Pacific.

Q. Now Mr. Barrett, you are familiar with the titles at Atlantic City, aren't you?

A. Quite familiar.

Q. From having searched them and researched them. Take the land south of Pacific and all the way along the beach front down as far as Missouri if you want to, or Albany Avenue. How do those descriptions run?

A. Practically all of them run at right angles to the streets.

Q. Take the seaside property for instance, that's 165 feet from isn't it?

A. I think that it is, although I could not say positively without referring to the deed, but it is my recollection that there is 165 feet between the avenue and the small street in the middle of the block.

Q. That's a 20 foot street, that made a 350 foot street, how did Charles Evans sell off his land, did he go off at right angles, I mean at cross angles, or follow a parallel strip right along Pacific Avenue down to the ocean front?

A. No, as his lands were formed by accretion he sold off numerous lots, rectangular.

Q. Moved his hotel front?

A. I don't know about that, but I know there are many deeds of record in the clerk's office at Atlantic County where he sold off parcels in rectangular shape.

Q. That was all between the 20 foot strip and Pacific Avenue that runs parallel with it and 165 feet from it?

262 A. Yes.

Q. Is that true of the other owners there where accretions have formed?

A. It is practically true in all instances.

Q. Do you know of a single instance where it is not true?

A. I don't recall any.

Cross-examination.

By Mr. Carr:

Q. Down in front of the Seaside the riparian line is a parallel line with Pacific Avenue?

A. It is 2,000 feet therefrom.

Mr. Bourgeois: Parallel with Pacific.

The Witness: Yes, 2,000 feet south and parallel with Pacific Avenue.

Q. That's all.

Redirect examination.

By Mr. Bourgeois:

Q. The high water mark is not parallel with Pacific Avenue though, is it?

A. At the present time, no.

263      ESTER D. RIGHTMIRE, called and sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Bourgeois:

Q. Mr. Rightmire you reside in—well, you have a business place in Atlantic City?

A. Yes, sir.

Q. You were formerly city surveyor of Atlantic City?

A. I was in 1909, 1910 and 1911.

Q. Will you tell me if you know whether or not New Hampshire Avenue is an improved street?

A. It is.

Q. When was it improved?

A. I think in the summer of 1910.

Q. And in what method was the improvement provided for?

A. Why it was graded and a hard surface pavement put on south of Oriental Avenue.

Q. I mean how was the payment provided?

Mr. Carr: Does he know?

A. By the city ordinance passed by the city—money provided you mean?

Q. Yes. Were the benefits assessed?

A. The benefits were supposed to be assessed, I don't know whether they have been or not, that was not during my time.

Q. How far south was that pavement extended?

A. Why from north to the Boardwalk, within a few feet.

264 Q. That is a street of what width?

A. Fifty feet.

Q. Now you have done a great deal of surveying for locating lots and for locating buildings, and so on.

A. Quite a number, yes, sir.

Q. Do you know how the properties, that is how the boundary lines of the properties in Atlantic City south of Pacific Avenue run?

A. At right angles or parallel with the various streets.

Q. Do you know of any case where any land that has been made by accretion, the lots have been sold by the owners other than parallel or at right angles to those streets?

A. I don't recall of any.

Q. Never saw any.

Cross-examination.

By Mr. Carr: No questions.

Hearing adjourned to Thursday, October 11, 1917, at 10.30 A. M.

265

Thursday, October 11, 1917—10.30 a. m.

Case Continued.

Appearances: Same.

Mr. Bourgeois: If the Court please we have received a certified copy of the map from the secretary of state's office, I would like to have that marked in evidence. I will now offer the commissioners' map and ask that it be marked.

Mr. Carr: My objection still stands I take it.

Mr. Bourgeois: Well that is only admitted I understand tentatively.

(Map marked Exhibit P5.)

Mr. Bourgeois: I will next offer in evidence the prior title to this land, first is the certified copy of proceedings in the Orphans' Court of Atlantic City December 10, 1838, of record in Book A of Bounds and Divisions, and Book A of the Minutes of the Orphans' Court of the County of Atlantic, showing the division of the Jeremiah Leed's propertice, including the land now in question.

(Received and marked Exhibit P6.)

266 Mr. Bourgeois: I offer in evidence abstract of deed, or rather I offer the deed and will have the abstract marked from Chalkley A. Leeds and wife to Robert B. Leeds, August 25, 1852, recorded in Book G, p. 1007, clerk's office Atlantic County.

Mr. Carr: May we have an opportunity to verify these.

The Court: Both sides may do that.

(Received and marked Exhibit P7.)

Mr. Bourgeois: I offer in evidence the record of a deed from Robert B. Leeds and wife to John McClees, July 9, 1856, of record in the office of the clerk of Atlantic County, Book I, page 425, and ask that the abstract be marked.

(Marked Exhibit P8.)

Mr. Bourgeois: I offer in evidence deed from John McClees to Jonah Wootton dated March 19, 1858, recorded in Book K, page 507, in the clerk's office of Atlantic County, Mays Landing, N. J., and ask that the abstract be marked.

(Marked Exhibit P9.)

Mr. Bourgeois: I want to offer in evidence a conveyance from John McClees to Jacob R. Eby, bearing date January 10, 1860, recorded in the clerk's office, Atlantic County at Mays Landing, Book M, page 708, I have not an abstract of that but will supply it.

(Marked Exhibit P10.)

267 Mr. Bourgeois: I offer in evidence deed from Camden Atlantic Land Company to John McVey, bearing date February 26, 1858, recorded in the clerk's office, Atlantic County, Mays Landing, Book M, page 710.

(Marked Exhibit P11.)

Mr. Bourgeois: I offer in evidence conveyance from John McVey and Harriet his wife and Jacob Eby and Elizabeth his wife to John McClees, dated January 10, 1860, recorded in clerk's office, Atlantic County, Book 42, page 189.

(Marked Exhibit P12.)

Mr. Bourgeois: Now if your Honor please I would like to offer two other conveyances I have not got here but I think there will be,—that is a conveyance from Manassa McClees for a triangular strip of land lying westerly of the westerly division line of the John McVey property, it being a triangular strip running from about Oriental Avenue to the low water mark or to the surf, and would run down the middle of what is now Victoria Avenue.

(Marked Exhibit P13.)

Mr. Bourgeois: I offer in evidence deed from John McClees to McVey for a triangular strip of land beginning in what is now the middle of Seaside Avenue extended and in the easterly line of the land of John McVey, thence running to the high water mark. The object of this conveyance, your Honor please is to show that the

parties made a conveyance of these triangular strips so as to  
268 straighten their lines, making them run parallel with those  
avenues.

(Marked Exhibit P14.)

Mr. Bourgeois: I offer in evidence a deed of conveyance from John McClees to the Atlantic Beach Front Improvement Company dated March 9, 1897, recorded in clerk's office, Atlantic County, Mays Landing, Book 211, page 174. That if your Honor please was the conveyance which Mr. Carr started out with and which we admitted was the common grantor of our present parties.

(Marked Exhibit P15.)

Mr. Bourgeois: I also offer in evidence a conveyance from the Atlantic City Beach Front Improvement Company to Charles G. Henderson, Jr., J. Franklin Moss, and John C. Hancock dated Nov. 1, 1899, recorded in book 237 of deeds, page 209.

(Marked Exhibit P16.)

Mr. Bourgeois: I offer in evidence conveyance from the Atlantic City Beach Front Improvement Company dated May 24, 1900, to the States Avenue Land Company, recorded in the clerk's office of Atlantic County in Book 244, page 418.

(Marked P17.)

Mr. Bourgeois: I offer in evidence conveyance from Charles G. Henderson, Jr., and wife to J. Franklin Moss and wife, John C. Hancock and wife to Roland Conrow, bearing date April 14,  
269 1903, recorded in the clerk's office Atlantic County, book 287, page 76.

(Marked Exhibit P18.)

Mr. Bourgeois: I offer conveyance from Rowland Conrow and wife to States Avenue Land Company bearing date April 14, 1903, of record in the clerk's office, Atlantic County, book 286, page 113.

(Marked Exhibit P19.)

Mr. Bourgeois: I offer in evidence conveyance from the States Avenue Land Company to the Dewey Land Company, dated December 19, 1904, recorded in the county clerk's office, Atlantic County, Book 313, page 363.

(Marked Exhibit P20.)

Mr. Bourgeois: I offer in evidence deed of conveyance from the Dewey Land Company to Samuel F. Nirdlinger, the complainant, bearing date, December 7, 1907, recorded in Book 382, at page 19, for an undivided quarter interest.

(Marked Exhibit P21.)

Mr. Bourgeois: I offer in evidence record of deed from Dewey Land Company to Samuel F. Nirdlinger, dated January 20, 1909, recorded in the clerk's office, Atlantic County, Book 395, page 271, for an undivided one-twelfth interest in the land.

(Marked Exhibit P22.)

270 Mr. Bourgeois: I offer in evidence the record of a deed from the Dewey Land Company to Samuel F. Nirdlinger, professionally known as Samuel F. Nixon, bearing date, February 10, 1909, of record in the clerk's office, Atlantic County, Book 398, page 116, for an undivided one-sixth part of the lands in question.

(Marked Exhibit P23.)

Mr. Bourgeois: I offer in evidence deed from the Dewey Land Company to Louis E. Stern, bearing date July 17, 1912, recorded in the clerk's office Atlantic County, Book 486, page 443.

(Marked Exhibit P24.)

Mr. Bourgeois: I offer in evidence deed from Samuel F. Nirdlinger to Louis E. Stern, July 17, 1912, recorded Book 486, page 445.

(Marked Exhibit P25.)

Mr. Bourgeois: I offer in evidence deed from Louis B. Stern to Samuel F. Nirdlinger, bearing date July 17, 1912, recorded clerk's office, Atlantic County, Book 486, page 447, for an undivided one-half interest in the lands in question.

(Marked Exhibit P26.)

Mr. Bourgeois: I offer in evidence record of a deed from Louis E. Stern to the Dewey Land Company for an undivided one-half interest bearing date, July 17, 1912, recorded in Book 486, page 450.

(Marked Exhibit P27.)

271 Mr. Bourgeois: I offer in evidence record of deed from the Dewey Land Company to Samuel F. Nirdlinger, conveying one-half interest in lands in question bearing date, February 4, 1914, recorded in the clerk's office, Atlantic County, Book 523, page 47.

(Marked Exhibit P28.)

BARCLAY H. BULLOC, called and sworn as a witness on behalf of plaintiff, testified as follows:

Direct examination.

By Mr. Bourgeois:

Mr. Carter: Before this witness is examined may I make this remark to the Court concerning this documentary evidence that has



just been offered, and that is that by offering it we did not wish to have the Court or counsel on the other side conclude or imagine that we have abandoned the view that I expressed at the opening that this issue does not involve our title. It is our view and always has been that the sole question under the pleadings as they stand and under the admissions of counsel in this controversy is: Is the claim of the defendant to the locus in quo as against us who are in possession, claiming a title a good or bad claim, and that the decree will simply adjudge that fact.

The Court: But does not the statute say that the decree shall settle the rights of the parties? It does not seem to me possible to determine the defendant's title or his right until we had the plaintiff before us, how could we determine until we knew what the plaintiff's right was?

Mr. McCarter: Well, my thought is this: Of course, I do not want to now discuss it and take time to discuss it in full but my own view is, and I think Mr. Bourgeois shares it with me, that the whole purview and scope of the act to quiet titles under which this action is brought and is pending, is not to determine whether or not the complainant, who is defendant, as the case develops, has a title; that his position is exactly similar to that of a defendant in ejectment and that after the man who claims to own and is in possession of property has filed a bill and has called in a claimant and made him assert his claim, the only subject for determination is the question whether or not that claim of the defendant is or is not a valid claim to the premises, and the question of the right of the plaintiff affirmatively—the complainant who is really the defendant—to the locus in quo does not logically and properly I think present itself. I do not care to make an extended argument upon that now unless your Honor desires it. It seems to me to be premature, but what I started to say was that by offering this chain of title, it must not be understood either by the Court or counsel that we abandon that position, but that we do offer them out of abundant caution because of the view that Judge Relstab entertained and expressed in the order requiring us to set up these deeds, or as many of them as we have set up, and we bow with deference to that order, and therefore offer these deeds in view of that order, but we shall contend at the end of the case, in our arguments that the position is as I have stated and that therefore these deeds are superfluous. By making this statement I do not want the Court to conclude that the deeds hurt us in any way, on the contrary they strengthen us, but we think it is an unnecessary anchor to windward.

(It is stipulated that the various conveyances in both titles did in fact convey high land or land above the Atlantic Ocean at the time those conveyances were made, except where they may have provided otherwise or by their terms attempted to convey land under water and that land between any high water mark and the existing high water mark were formed by accretions.)

By Mr. Bourgeois:

Q. Mr. Bulloc, you live where?

A. Atlantic City.

Q. How old are you?

A. Sixty-five.

Q. How long have you lived in Atlantic City?

A. Fifty-six years, moved there in '61.

Q. Do you remember back in '61 when you first came there?

A. Oh, yes, I remember when I came there.

Q. Where did you live?

A. We lived on Massachusetts Avenue between Atlantic and Pacific, next to Congress Hall.

Q. Were there any buildings at that time on Vermont Avenue?

A. On Vermont?

Q. Yes.

A. Not on Vermont.

Q. Where were they?

A. Easterly of Pacific, you mean?

Q. Easterly of Vermont Avenue.

274 A. Oh, yes, yes.

Q. What buildings were there, if you remember that were easterly of Vermont Avenue, who lived there?

A. A man by the name of Sharp.

Q. Well, was he easterly of Vermont, or was he easterly of New Hampshire yet?

A. Well, of course, easterly of both and on Vermont Avenue north of Atlantic, Mrs. Grey lived on one corner. Opposite her, not quite on the corner was an old colored family, the first in Atlantic City, William Bright, Mary Bright and son Daniel. Then north of that a little west was Notes, Joshua Notes. They were the three houses that I remember well.

Q. Do you remember this man Sharp, the rifle manufacturer?

A. Yes.

Q. Where did he have his place?

A. He had it up on a high hill about New Hampshire Avenue in this clump of trees.

Q. Was that above or below Atlantic Avenue?

A. That was between Atlantic and Arctic, which would be north of Atlantic.

Q. Now, Mr. Bulloc, during your residence there in your life have you made a study of the question of the tides?

A. Well, I have because that was my pleasure, out on the water all the time.

Q. Does a northeast storm make land or does it cut away land?

A. Well, it generally cuts in certain places.

Q. Will you explain to the Judge how that is done and why it is?

A. Well, a northeast wind brings in tides generally, the higher because it lasts longer, three or four days, sometimes a week. The

blow is generally very heavy and those tides of course  
275 wherever there is any bluff cuts them down, the seas run  
higher and cut down those bluffs and carry them southerly.

Q. Tell me how it is that it carries them out. What about the currents?

A. Well, the upper part of the ocean is moved by the wind and flows that way. The under part of the ocean is what they call the undertow, that flows the opposite direction, makes an undertow and that undertow carries stuff down in the bottom of the sea the opposite direction from the top which would be northeast, and that naturally deposits this, whatever it might be in places like little eddy tides, forming the deep cuts.

Q. In other words the pressure of the wind presses the top of the water on to the beach and that has to get out somewhere and goes to the bottom and goes in the opposite direction and that carries it out?

A. Yes.

Q. And that, is that the result due to the northeast storm cutting the beach away?

A. It is.

Q. Now, what about the westerly storms or westerly winds and northwesterly winds?

A. Northwesterly winds always makes land.

Q. Now, why do they make land?

A. Because after a big storm the sea is very high, the sea is—the waves is filled with this sand. It is all a mixture. You can take a bucketful and set it down, you will find in the bottom of the bucket a lot of sand and while that is stirred up the wind holds northwest and blows a gale, generally about three days, that blows the upper part of the ocean southeast, forms a strong undercurrent, undertow they call it, and that deposits this sand in on the beach. I have seen it in a couple or three days make as much as what it has taken away, just by that.

276 Q. In other words the undertow is always in the opposite direction?

A. Always.

Q. From that in which the wind blows?

A. Always.

No cross-examination.

Mr. Bourgeois: We want to offer in evidence the petition filed in the Court of Chancery asking or praying leave to open the final decree in the case of Dewey Land Company against Stevens and final decree and order entered thereon.

The Court: That is a petition filed by you?

Mr. Burgeois: By Mr. Carr, that completes that Chancery record. May we supply that?

The Court: Yes.

(Marked Exhibit P29.)

Mr. Bourgeois: If the Court please, I want to offer in evidence some bills of expenses paid by the complainant in this case. First is a bill of George W. Richman for paving New Hampshire Avenue, \$151.

(Marked Exhibit P30.)

Mr. Bourgeois: I offer a bill of George W. Richman for a balance of \$100.

(Marked Exhibit P31.)

277 Mr. Bourgeois: That's for paving on the easterly side of New Hampshire Avenue, the property now in dispute.

Notice of assessment for street improvement against Mr. Nixon and payment of it for \$160 dated September 6, 1910.

(Marked Exhibit P32.)

Mr. Bourgeois: Taxes for 1910, paid amounting to \$1,667.

(Marked Exhibit P33.)

Mr. Bourgeois: Taxes for 1911, amounting to \$1,792.03.

(Marked Exhibit P34.)

Mr. Bourgeois: Payment of taxes for 1912 amounting to \$2,093.47.

(Marked Exhibit P35.)

Mr. Bourgeois: Now, if the Court please, I want to offer a map that was proven yesterday to be correct, it was made by a surveyor who is now in the United States Service, captain in the U. S. Army.

Mr. Carr: Mr. Ridgeley was too young a man in 1881 to have made that survey. I do not think the map is admissible. He has not put those marks on there from original sources, it must be hearsay.

Mr. McCarter: Two of the witnesses have been shown this 278 map; it has been marked for identification and one of them has very specifically admitted that in 1881 there was a slough just as is shown and portrayed upon this map, therefore it seems to me the map is competent for that purpose, for illustration.

The Court: Wouldn't be competent to show that the location on that map of what the slough was is correct.

Mr. McCarter: Yes, sir, that's all we really offer it for, it is really to have a picture before your Honor's mind.

The Court: But it is not evidence that it is properly located there.

Mr. McCarter: No, sir, all right.

Mr. Carr: The difficulty your Honor, of course, the witness speaks of a general condition, that is the condition he remembers. Here are marks that are placed there showing a condition in 1881.

The Court: We won't accept it for that purpose, it is only for the purpose of showing exactly what the two witnesses have testified to, that's all.

Mr. Carr: General condition, I don't object to that, not as showing the exact location of any of the high water marks.

The Court: No.

(Received and given the same mark as for identification.)

Plaintiff rests.

279 JOHN W. WILSON, called and sworn on behalf of the defendant, in surrebuttal, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Wilson, you live in Atlantic City?

A. I do at the present time, yes, sir.

Q. How old are you?

A. In March I will be seventy, this coming March.

Q. Where do you live in Atlantic City?

A. 22 North Rhode Island Avenue.

Q. How long have you lived in Atlantic City?

A. Three years the 22nd of this month I have lived there.

Q. When did you first know the beach in the neighborhood of Vermont, New Hampshire and Rhode Island Avenue?

A. Why, when I was a boy about eighteen—as far as I can remember about 1864 or '65, my mother and I used to go down on excursions on the Camden Atlantic Railroad from Vine Street, one day excursions, and while we were in Atlantic City my mother and I would roll along around the beach up around the lighthouse especially and go up to the inlet.

Q. Now, when you first knew the lighthouse section where did the water come with regard to the lighthouse?

A. Why I—well, my first trips to Atlantic City with my mother, we used to nearly always go up towards the lighthouse and I remember distinctly being in the lighthouse one day, and the lighthouse keeper, the man had charge saying that in storms the water has come up and struck the lighthouse.

280 Mr. McCarter: I move that that be stricken out, that certainly is not evidence, what the lighthouse keeper said about storms in reply to the question where the tide generally came.

The Court: I think I will have to strike that out.

Q. Where did the water come so far as you were able to see and did see: Where did the water come with relation to the lighthouse, how near or how far away?

A. Well, it has been a long while ago but it was not far off, I can hardly tell, probably fifty or sixty feet, something like that, but at the time I saw it then I didn't know I would be called upon to verify it. I don't suppose to submit a paper here—but it would give some idea, it was published in the Ledger, 1912. Of course, I don't submit this as evidence, but it gives you some idea how this was. It was taken from a painting in 1865, gives you some idea.

The Court: I think you had better strike that all out.

Q. The paper which you show me is a picture entitled "Atlantic City and Lighthouse, 1865." Does that describe such a condition as you saw there around 1865?

A. Well, as far as I can remember, I can not say accurately, it is about a facsimile that is I was a boy then of fifteen or sixteen years of age, that it is a facsimile and I know that in about 1867 that the storm water came up to the Congress Hall and washed out the porch, or ran in around the Congress Hall and that was situated on

281 the corner of Massachusetts Avenue, that the guests in the Hall was very much excited and worried, afraid part of the hotel would be washed away. There wasn't many buildings around that neighborhood at that time, few and far between.

Mr. McCarter: The principal point of interest in this was the mosquitoes.

The Witness: There was plenty around there and green head flies the size of sparrows.

Mr. Carr: We would like to offer this picture if the Court please.

Mr. McCarter: Well, thirty-one years ago tomorrow I married into the family of George W. Childs, his niece, who was then the proprietor of the Philadelphia Ledger and we were always brought up with the idea that the Philadelphia Ledger represented absolute verity. I don't know that it does, but thirty-one years ago it did, I suppose that thing is about as valuable as the captain's paper the other day, it really doesn't prove anything of course.

Mr. Carr: It is only offered so far as the picture of the lighthouse goes.

(Marked Exhibit D14.)

282 Cross-examination.

By Mr. Bourgeois:

Q. Mr. Wilson, I understood you to say that was a correct reproduction of the situation there?

A. Well now, as far as my memory goes it was. The water was close to the lighthouse, close to it and you might call them cedar trees, pine trees sticking in the sand around and it was rather a dilapidated neighborhood.

Q. You remember the lighthouse?

A. Oh, I remember it, went up in it too.

Q. Do you remember that tree that is washed down there?

A. Well now, really, that's splitting hairs too fine.

Q. Well, that looks as if it were a pretty good sized tree.

A. It looks so there.

Q. And they were large trees there, weren't they?

A. Well, there were trees around there, but now in 1865 and 1917 is a hard matter to say, but I know that the water came close to the lighthouse, there wasn't much space between them.

Q. You have had quite a little experience in beaches and had an opportunity to observe them?

A. Well, I observed the beach on the northern part of Atlantic City—that according to my memory changed oftener and further along the beach, the simple reason was——

Q. Let me ask you something?

A. Beg pardon?

Q. That is a fact, isn't it, that large trees on the seashore grow only on the high fast land?

283 A. Well, I never took particular notice right along the shore except right around the lighthouse some trees—but up on Atlantic Avenue on those sand piles the houses was few and far between. Along Atlantic Avenue a great many lots were sand banked and grass there and even shrub pine trees.

Q. I know—red cedar, weren't they?

A. I cannot—trees apparently.

Q. But you never saw any red cedar trees growing right down close to the high water mark unless the tide had washed in?

A. No, I cannot remember now, particularly distinctly.

Q. That's all.

JOHN H. GRAHAM, called and sworn on behalf of the defendant, in surrebuttal, testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Graham, are you an Atlantic City man?

A. Yes, sir.

Q. And how old are you?

A. 58.

Q. How long have you known the inlet and lighthouse section at Atlantic City?

A. For about forty-five years, since 1872 I went there.

Q. When you first knew the beach in the lighthouse section where was the high water with relation to the lighthouse?

284 A. Well, at that time, 1872, it came up from near the lighthouse yard on the north corner—this is on Vermont Avenue and Pacific, it cut away and washed in under the lighthouse yard, I suppose 175 or 200 feet to the lighthouse.

Q. Now, was Vermont Avenue there at all south of Pacific?

A. Not south.

Q. Was New Hampshire on the ground at all south of Pacific?

A. No, sir, not at all.

Q. Was Maine Avenue there at all?

A. Maine is further up?

Q. Maine is the first Street in Atlantic City?

A. Well, I cannot say whether all of it was there—one portion might have been there, but not laid out.

Q. Well, were there any lots at all, any south of Pacific Avenue when you first knew the lighthouse section?

A. Not above Massachusetts Avenue.

Q. Nothing above Massachusetts Avenue?

A. Nothing above Massachusetts Avenue.

Q. And do you know about where the high water mark curved around so that it crossed Pacific Avenue?

A. Where it curved in—it started from Rhode Island, cut in here, cut Pacific Avenue way up to the lighthouse property.

Q. In other words the high water line crossed Pacific Avenue?

A. That crossed Pacific Avenue just above Rhode Island, just taking off the corner of Rhode Island Avenue.

Q. And then east of Vermont Avenue and south of Atlantic were there any lots—perhaps you can tell better by reference maps. Here is the lighthouse, Vermont, New Hampshire, here is Maine.

Now, I understood you to say that the water came  
285 around here and cut off the easterly corner or southeasterly corner of the lighthouse property?

A. Yes, sir.

Q. And then it went somewheres northward. Now where did it go?

A. It got up to Arctic and then went up to the railroad.

Q. It crossed Atlantic Avenue somewheres, of course?

A. Yes.

Q. Now, did it cross Atlantic Avenue somewheres east of Vermont Avenue?

A. It crosses somewhere east of Vermont Avenue, I couldn't say how far, or northeast.

The Court: What do you mean the shore line?

The Witness: Yes, the shore line came around and worked its way north.

Q. Well, was it west of New Hampshire Avenue and east of Vermont Avenue?

A. Yes, sir, to my knowledge.

Q. Can you give us any idea whether it was midway of the block?

A. I couldn't exactly.

Q. At any rate no part of New Hampshire Avenue was in existence at that time south of Atlantic Avenue?

A. No, sir, south of Atlantic Avenue.

The Court: You don't mean that the avenue was, but you mean that no part of the land upon which the avenue is now was in existence.

The Witness: Well, some portion of the land, by they haven't been laid out there.

286 The Court: We understand that, but was the land over here to the southeast of the lighthouse, was that in existence at all?

The Witness: Not southeast, no, sir.

Q. In other words there were no lands southeast of the lighthouse at that time?

A. No, sir, up at the northeast, to the northward further there were.



The Court: What do you mean northeast?

A. You see right opposite the lighthouse is southeast, and as you go up northeast, this is to the northward of the lighthouse.

Q. The inlet would be northeast from the lighthouse?

A. Yes.

Q. Taking the two blocks south of Pacific Avenue and bounded by South Vermont and Maine, were they there at that time?

A. They are south of Pacific.

Q. Yes, they are southeast of Pacific.

A. No, there was no land there, that was water.

Q. Now, did you work on the Government jetties?

A. Yes, sir.

Q. Do you remember where the first jetty was put up?

A. Well, the first jetty that I worked on, they were right opposite the lighthouse, those square cribs. I worked on those and helped fill them in with brush and stone.

Q. When did they put them down, do you remember?

A. 1876, that's when I worked on them, '76.

287 Q. That's Centennial year?

A. Centennial year, yes, sir.

Q. Now, from that time on did the land begin to make outward?

A. Very slowly, there was a big bar there on the outside, a south bar. The channel changed, worked off to the eastward. That south bar worked in, raised and made a big slough in there. In that place I sailed a boat, caught fish probably four to eight feet of water in there.

Q. Do you ever know a time when the high water mark was out further than it is now?

A. No, sir, it is furthest out I remember.

Q. And has the land gradually been making over all these years from 1875?

A. Yes, sir, gradually making now.

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Graham, what direction did the beach take in 1872 from where it crossed Pacific Avenue up to the inlet, about parallel with Vermont Avenue?

A. Worked easterly.

Q. How much?

A. Well, it has gone out I suppose two squares and a half or maybe more at the present time from the time——

Q. At that time it must have gone up almost parallel with Vermont Avenue?

A. Almost.

Q. Almost parallel with Vermont Avenue? Now, I show you this and ask you if you aren't mistaken about that.

A. Well, I ain't much on maps.

288 Q. I know, but you can see this part, you know the railroad that's been there always?

A. Yes, where is this going?

Q. That's going to the inlet up along Maine Avenue. Now, here is Vermont Avenue and if the inlet line had gone parallel with that it would have washed the railroad out before it got to the inlet?

A. If it had gone up that way it would.

Q. If it had gone up parallel with Vermont?

A. The way it went was on a curve.

Q. Yes, that's right, it came from Pacific and curved around up Maine Avenue, didn't it?

A. Yes, but it went in close to the railroad.

Q. After it got above Madison?

A. Yes.

Q. It wasn't in close to the railroad until it got to Baltic?

A. No.

Q. After it got to Baltic it got close to the railroad that protected it?

A. Yes, sir.

Q. So that the shore line came on a curve and crossed somewhere in the intersection of New Hampshire and Atlantic Avenue.

A. Yes, sir.

Q. Now, you remember when that slough made up, don't you?

A. Yes, sir.

Q. And that added to the bend of the beach?

A. Yes, sir, that added to the bend of the beach, that's what built up the point of the beach.

Q. And that slough lay northeast of the point of the beach, didn't it?

A. Northeast of the lighthouse.

Q. So that when that made in it made the point of the beach there?

289 A. The main part of the slough was right opposite the lighthouse, between Vermont and Rhode Island Avenue and ran down to almost Massachusetts.

Q. These tides that you speak of coming up to the lighthouse, they were the storm tides, were they not?

A. Well, came up to the lighthouse at ordinary high water.

Q. But those that come up to the lighthouse, they were the storm tides?

A. Yes, they would wash up to the lighthouse.

Q. That's all.

TIMOTHY HOWELL PARKER, called and sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Carr:

Q. Captain, where do you live?

A. Well, I should say at Longport, now.

Q. Captain, were you in the United States Life Saving Service?

A. Yes, sir.

Q. How long were you in that service?

A. Well, I was in real service thirty-eight years, and two years on pleasure.

Q. Where were you stationed in the life saving service?

A. Longport, Atlantic City, Chelsea.

Q. At Atlantic City were you stationed at the station immediately adjoining the lighthouse?

A. Twenty-six years, from '79 to '95.

290 Q. When did you first know Atlantic City, Captain?

A. I think about the spring of 1860 or '61.

Q. Now, at that time do you know where the high water mark was, do you know where the water was with relation to the lighthouse, in 1860, or '61?

A. If I was to explain, or try to, to give my words correct, you would doubt my words.

The Court: No, we wouldn't.

A. (Continuing:) Because you would say I wouldn't be old enough to remember that much, it would take me two days and a half here to give the evidence.

The Court: Just answer the questions, they know what they want. I don't.

Mr. McCarter: I am asking whether you mean storm high water mark or ordinary high water mark?

The Witness: I can give you either one.

Q. We will take them one at a time. Take the ordinary high water mark first.

A. Well, in 1860, I suppose to get at it right I would have to give what it was caused me to get there, at that time.

The Court: No, never mind about that.

A. Well, I was going down to Atlantic City on an errand and I heard tell of a jail and I wanted to see a jail.

291 Q. A jail?

A. Yes, sir, the first jail was built at Atlantic City and I went down to see it.

The Court: Have they got one there yet?

The Witness: The same one there yet, I can take you there and show you it. That stands back of the Vermont Hotel. Well, we went and looked at the jail made out of three by four stuff like they use in buildings now, nailed this way. Well, we heard a pig squeal way down on Atlantic Avenue in quite a clump of pine and cedar woods, so we went down to see what was the matter with the pig, and it was quite a ways then to the water line, but you had to go through the brush, a footpath to get out to the surf. I could not say but I suppose very near where Maine Avenue is now, by the way it looks, that was the first trip.

Q. Did you get the pig?

A. No, the man said he wanted it for winter, that's what caused me to be there.

Q. You haven't told us about the high water mark.

A. You haven't asked me yet.

Q. Where was the water?

A. I couldn't see it, it was beyond this brush.

Q. Tell me where you did see it?

A. Well, when I did see it to know where it was, was in '74, either '73 or '74.

Q. Where was it then Captain?

A. Well, it was right near, that is in front of the lighthouse to Vermont Avenue. I worked on the jetties there when they built them.

The Court: Where did you say this jail was located?

292 The Witness: On Atlantic Avenue and Vermont, Vermont and Atlantic right back of the hotel.

Mr. Arnold: East side of Vermont and north of Atlantic.

The Witness: That's it, it is turned around now.

The Court: Now then, you say that at that time you went towards the inlet, towards Maine Avenue and it was all covered with brush and you did not see the shore line. How about the shore line? Where was the shore line, here is the jail.

The Witness: That's the jail, where is Vermont Avenue?

The Court: There is Vermont.

The Witness: We went out here to the jail and I suppose where this house is, about along there was the pig pen, over here along Atlantic Avenue; then from that pig pen there was brush and trees, pine and cedar trees along here, but how far it went out to there I could not say, because there was a row of brush and a path went down here to a building; they said you could go there and get something to drink like beer, the like of that if you wanted to. Out here in these trees and bushes, I suppose that's the building they called Sharp's Building. I understood it was.

The Court: Now, how far was the shore line from the jail in this direction, that is out towards Pacific Avenue.

293 The Witness: Well, I don't know, I didn't take notice down this way at that time. Of course, that was quite a good while ago and we was only out here to see the jail, that was the principal errand that I got out to the water and then following up the pig squealing.

Q. Now Captain, in '74—you say you were working about that time on the Government jetties?

A. Yes, sir.

Q. Did you work on both jetties?

A. Yes, sir, all three of them.

Q. Where were the jetties somewhere in the neighborhood of Arctic Avenue, where were they?

A. That was a spur put off from the railroad that runs up

to the inlet just a little ways this side Arctic, probably on the side of the avenue and run right out.

Q. Do you mean it started a little south of Arctic or a little north?

A. A little south.

Q. How far did they run out, Captain?

A. I suppose it was piled about three hundred feet.

Q. It was piled about three hundred feet out?

A. Yes, sir, find it now, it is there yet.

Q. Now, can you show us where the high water mark ran at that time crossing say Vermont and New Hampshire Avenues. Suppose you start with Rhode Island. Here is the lighthouse, is that your house right across from the life saving station?

A. Yes, sir, both of them is mine. Now, this is the railroad that's coming up.

Q. This is the inlet?

A. That's the inlet, there.

Q. Yes.

A. I suppose like that (indicating with finger).

294 Q. Could you do that with a lead pencil?

A. Yes, sir, I have made two or three maps out for the court and the Government.

(Witness is referring to D13.)

A. Now, that's when the jetties were put there, you want it when the jetties were put there?

Q. Yes, which would be about 1875?

A. '74 they started them jetties, I think that's when it was. Now, that would be the front of my house. There is where the first Boardwalk went and the tide washed right up to Atlantic Avenue something like that. It had a bend in there.

The Court: Where did it go down this way?

A. (Continuing:) This is Pacific. There was a little straight place went like that right in front of the lighthouse, turned right around that corner like that, come down Oriental—wasn't no Oriental there—can't put that in there—this was Pacific, that was a man's house by the name of Spooner. Now, they come on down Massachusetts Avenue pick the corner of Spooner's house astern and everything right out from under it. That's Sharp it says now, but that was Spooner's.

The Court: The line marked S—S on D13, is the line drawn by the witness.

Q. Now Captain, what years were you in the service at the Atlantic City Life Saving Station about, commencing when?

A. I commenced 1879.

Q. And how long did you stay at this Atlantic City station?

295 A. 1905.

Q. 1879 to 1905?

A. Yes, sir.

Q. Now Captain, have you ever known at any time when the high water mark at the foot of Vermont and New Hampshire Avenues was any further out than it is now?

A. Yes, sir.

Q. When was that?

A. I just can't remember exactly what year, but I think by the 1908 big storm, it was in 19—or 1887. It was 1888 or 1889, that we had the big storm, wasn't it, and it wanted to sweep away the island, couldn't anybody get off three days. I don't remember whether it was '88 or '89. And if that was in '89 the beach was further out in '88. If it was in '88, it was further out in '87. It was very nearly as far as it is today.

Q. Well, what I mean to say, do you ever know a time when the beach was out any further than it is now?

A. Out any further than it is now?

Q. Yes.

A. Well, I would have to explain to you why that caused it to be out there. Probably you will ask me after a while.

Q. Was there ever any more land any further out than there is now, so far as you know?

A. Well, I can not tell whether it was any further out in one sense and I think I can.

Q. Well go ahead, tell it in your own way, Captain.

A. Well now, this pond that they talked about, you know this slough that you talk about, you know each end of that was tide and one end was tide sooner than the other. Now the upper  
296 end filled up first and there was a bar made, if I can take and show you now where it was—got a mark there if you want to know where it is—there was a bar made that the tide did not go over and grass grew on it, and of course, when the grass grows it forms the sand. It is the sand that blows that makes hills. The ocean never washed up a hill, it washes them down, and if you can get the grass to grow you can form a hill, if you can get it out. Well, that made up and the grass got to growing on it just the same as it is over abreast of the inlet today, and then when this big storm came either in '88 or '89 it carried that hill as we would call it right over into this slough, just forced it right over, carrying it out to sea. It had water on the inside for it to carry it over onto and it stayed there and that's what filled up the slough, that is, so suddenly.

Q. Made a lot of land?

A. Yes, sir, of course it made land, now that's why I say I seen it further out. Now, we walked down Atlantic Avenue onto this bar, walked down below Pacific Avenue on the bar and I don't know that anybody remember—that there was a schooner come ashore there by the name of John Roche and she come ashore on this bar and there was bar enough to go over there and to have a sale and to sell the stuff. They filled the schooner with barrels to float her off and when the tide raised you know and lifted the schooner up and dropped her on the bottom bye and bye the stern flew out just the same as a stopper flies out of a champagne bottle.

Q. Don't know anything about a champagne bottle?

A. No, I suppose not, not in open sight; so of course the barrels all come out you know and the vessel broke in two and I bought half of her for \$1.35. I own a vessel out there. I want you to take her off that ground too. Now, I will tell you where that schooner is. She lays, I think, in the third piling of the pier in front of the Royal Palace that goes out on the dock. That's where she is sunk in the sand.

Mr. Bourgeois: That's your half?

The Witness: My half, yes, sir.

Q. Where is the other fellow's half sunk?

A. I don't know where that went, that went on up to the inlet.

Q. Now, Captain, was there ever any more land than there is now at New Hampshire and Vermont Avenues, so far as you know?

A. Well, I couldn't say that but by being out on this bar and walking down that way and not having any regular mark, nothing more than this vessel and the like of that, and patrolling around on that bar, why of course, I couldn't say, I don't know as it was any further out. There might be five, ten or fifteen out that way or this way, but I think——

Q. You mean this bar, that was out on the outer side of the slough?

A. Yes, sir.

Q. But as to solid land, is there more or less solid land now than there used to be?

A. Oh, yes, there is more, taking it clear into the corner of Pacific.

Q. Yes.

A. Oh, yes.

Q. Has there been a steady gain of ground there?

A. There has been a steady gain of ground in there by putting out things to hold it and to make it.

298 Q. Such as jetties you mean?

A. Don't take jetties, I have seen more—I have made more ground in five years than any jetties ever been made yet on the coast.

Q. How do you make that, Captain?

A. Oh, easy, if you are a mind to work, I didn't have any money I had to do the work myself and I done it as I wanted to do it. I tell you how I made it if you want to know.

Q. Well, you tell me at lunch.

Mr. Bourgeois: No, tell us how he makes it.

A. Why I bought a lot on Vermont Avenue. A man sold it to me for nothing, I didn't have a dollar, but if it ever got worth anything I was to pay him \$2,000 for it and I had a man foolish enough to lend me \$2,500 on that lot to build a house, so after I built the house, I built the first house that's built on the water front on piling to live in.

Q. Is that 23 South Vermont Avenue?

A. Yes, sir, that's it.

Mr. Bourgeois: You aren't afraid to use that number?

The Witness: Everybody said I was a fool or crazy, didn't know which.

A. (Continuing:) I wasn't losing any thing, I was losing somebody else's money if I lost it. Well, I built the house and I stepped right off the Boardwalk onto the corner, that's the way I built it. There was 25 by 50 feet of ground out of water at low water, but not at high, right on Vermont Avenue. I built the house  
299 three stories high and one story to dig out if I wanted to, underneath, and let the water come on through, so as not to interfere with my foundation. I built it like a photograph gallery with hooks, hooked it up, and then it got to making up a little and in the winter time when it froze, I put a sail on a wagon and went northwest—I used to go up to Baltic Avenue and along there and haul down trash and fetch it down easier than a horse working, fetch it down, dump my load and go back and get it. I done that at nights when a good many people was asleep. Well I built up a brush the full length of my lot and — about five years I had a sand hill from fifteen to twenty feet high in front of my house, that is in front of the back of it. I sold \$450 worth of sand out of that sand hill and kept a raising more from the foundation. That's the way to build sand hills. I got the grass started and the sand blowed in there off of somebody else's land and I ketched it, but now of course, they build jetties to ketch somebody else's ground, that's the way to build sand hills.

Q. Captain, I think that's all. Or just a moment, will you show on the map where this house was that you built, is it the house marked on Exhibit D13, marked T. H. Parker?

A. No. 23.

Q. South Vermont Avenue?

A. No. 25, yes, sir—no, that's the last house I built, this is the one I built on the piling.

Q. No. 23?

A. Yes, sir, now I will show you where that jetty is as long as we are right here. Now, my lot is 200 feet deep, back to there (indicating) and right here is Murphy's house and right there Dr.

Dick built some houses, well 25 feet from that corner is the  
300 farthest jetty out which they called Taxis; there wasn't a box put in them jetties; it is eight by ten wood, pine plank and bolted right down through and then filled with stone and the first one comes out about there and we run planks from here on trestles and from here out onto this wall, the stone, to dump them in that square jetty. It is regular square crib like that and bolted through. Well, I took that jetty, from here clear up to this jetty here, I took that by myself and I got a house built of it. I built a whole house frame out of it on Virginia. I framed it up on the beach, marked it out and all myself and this jetty that runs out right under this house now, this house, and that house stands right on the jetty, that runs out, that three by five white pine twenty-five foot long.

Q. Captain, do you happen to know anything about a strand?



A. Well, that's always been—a whole lot of things seems to be in question about water fronts isn't there.

Q. Yes. What do you know about a strand, if anything?

A. Well now, I tell you all that I know about a strand—I have never been on a beach—and I lived in different places. A strand is a term—there is a bird that is called a strand bird, and that bird always lives between high water mark and low water mark. he never runs up on the dry sand to find food because the food don't grow where the water ain't, and it is always called a strand from them two marks, it don't make no difference where the high water mark is—the gentleman said yesterday you couldn't establish a high water mark to save your life to suit two different persons, because a person goes there will take the days when the tide runs fullest, ordinary tides. Tides don't always run ordinary, but the man wants an ordinary high water mark to come up first, that's the month he will take to measure, and a fellow wants it further on, why that will be the month he will take and he will take the tide every day you know but they don't take them on the same month always.

Q. A little foxy work there.

A. Now, that's an ordinary tide of course, is where it really would run every day, but you can take a half a mile right along the beach and you wouldn't find the tide on the same line under ten feet, I don't suppose—it runs like this.

Q. Well, you were about to say what the strand was, what is it?

A. That's the water between the high water and the low water mark, wherever it may be.

Q. You mean the land?

A. Yes, where it is wet every day for a bird to live.

Q. Is it so understood by the men along the beach?

A. Always has been, my grandfather taught me that. I went aboard of a boat with my grandfather when I was five years old. He was blind, you wouldn't think it hardly, he used my eyes and his feeling. We used to go up to Crow Fairfax. These fellows goes out gunning and fishing knows where Crow Fairfax is in Grassy Bay. We used to go there and clam two weeks and he couldn't see a half way across from Hatfields across to May Marsh. We used to go up there through the thoroughfare and he used to ask me if I seen a certain house over on Leeds Point. I know it is Leeds Point now, but I didn't know it then. He said, "Do you see a house over there with a red roof on it and a big tree with big bushes on top of it?"

Well, he would go up and he would say, "Is that the house and the tree come in range?" And for him to know he would put his two fingers up that way, so we would go on up through the bay until these trees come in range. That was to throw him up far enough to keep him clear of the sand bars in the lower part of the bay—go across there just as well as a man with eyesight. That's the way he used to do down in the Bay Marsh. That's what we always termed a strand is where these birds feed. I can take you to my house now and show them to you every day.

Q. Well, was the term used in that sense by the men along the beach?

Mr. McCarter: If he knows.

Q. If you know?

A. Sir?

Q. Was the term strand used in that way by the men along the beach?

A. Yes, sir, yes, sir.

Q. That's what they understood and what you understood?

A. Yes, sir, if you went over on the beach and you found anything they asked you where you found it, "I found it along the strand," if you found it up above high water mark they wouldn't let you take it. Down in Maine today you can't.

The Court: Is that all?

Mr. Carr: That's all.

No cross-examination.

303 Mr. ASHMEAD recalled.

Direct examination.

By Mr. Carr:

Q. Mr. Ashmead, I show you Exhibit P5 being a map of Atlantic City, made in 1876, being a copy of such a map, and call your attention to two dotted lines nearly parallel with each other, the one marked low water line in 1852, the other high water line of 1852, and I ask you whether in any of your searches or examination of records or maps, you have ever before seen or heard of high water line and low water line of 1852, as depicted on this map?

A. Never.

(Objected to.)

A. (Continuing:) I never have except on the map——

The Court: Wait a moment, why Mr. McCarter?

Mr. McCarter: What does that prove?

The Court: Well, it tends to negative that the location of the high and low water mark of 1852, as on this map, is a correct location. It may be that this map will be evidence of the high and low water mark of 1852, if the statute is broad enough to make it so.

Mr. McCarter: Yes, sir, I understood that, but the fact that he has not found any data or any proof that shows such a thing, does that negative this?

304 The Court: It is evidence that tends to negative it because it is entirely clear that the person who made this map in 1858, in showing the high water line and low water line of 1852, must have had resort to some hearsay evidence or data or something or another of that kind. Now, this witness has made a study of the

conditions in Atlantic City, the topographical conditions in Atlantic City for a number of years, and it seems to me that if he could find any data upon which that line could be based that it is evidence of the fact that that is a mislocation of the line.

(Question repeated.)

Mr. McCarter: Well now, I should think that those documents that he has seen and inspected should be produced. He is giving us his recollection of what certain documents indicated.

The Court: Strictly speaking that might be so, but that becomes quite impossible of course. I will take the evidence for the purpose for which it is offered.

(Plaintiff's counsel asks an exception which is hereby allowed and sealed accordingly.)

(Sealed.)

A. I never have except on the map from which this is a copy that is there are a number of those maps, I have one down in the office.

Q. And the map from which this is copied is a—

A. Lithograph map, I have one of those lithograph maps.

Q. And did you ever attempt to verify those lines and see  
305 whether there was anywhere any record of such high and low water lines?

A. I have.

Q. With what success?

A. Low water line—the low water line on their map, as it is shown on the Rowand map, but the high water line is not shown on the Rowand map. I have never seen any high water line shown except on this map.

Q. You have made a great many surveys for the riparian commission, haven't you, in this locality?

A. Yes, sir.

Q. And you are familiar with the data which the riparian board has?

A. Yes, sir.

Q. Dealing with this particular beach?

A. Yes, sir.

Q. And you are familiar with the records in the secretary of state's office dealing with the same?

A. Yes, sir.

Q. And in the surveyor general's office?

A. Yes, sir.

Q. And in the Atlantic County offices, are you not?

A. Yes, sir.

Q. And have you looked in all those places?

A. I have.

Q. And you don't find any record of high water mark?

A. No, sir.

The Court: Who made the lithograph map which you speak of?

The Witness: Well, it has Thomas B. Garrett's name on it. He is a man did some little surveying down in Atlantic City.

306 The Court: When?

Mr. McCarter: If you know.

The Witness: Well, I remember when he was there, must have been along in the seventies, he lived in Atlantic City a number of years.

Q. Did he do much in the way of surveying down there?

A. Not very much, no, I don't think he did very much surveying.

Q. Do you know whether he was recognized as a high class surveyor.

(Objected to. Objection sustained.)

Cross-examination.

By Mr. Bourgeois:

Q. Mr. Ashmead, assuming for the purposes of our case that this does represent the difference between the high and low water line and that this map is a thousand feet to the inch, what would be the approximate distance at New Hampshire Avenue between high and low water mark?

A. Do you want this on the line——

Q. At right angles with the tide?

A. About 150 feet.

Q. And right on the point there it is a little wider than that, how much is it there?

A. About 200 feet.

Q. Now, take the same map on the point, made in 1876, when the survey was made, this particular survey, and show me what it is between high and low water mark there, right on the point,

307 that's down about North Carolina Avenue I think?

A. About 200 feet at North Carolina Avenue.

Q. That's the extreme point of the beach at that time, isn't it?

A. It seems so.

Q. Now, let me ask you, the street system was put on the dedication map by Osborne, that's your understanding?

A. I heard so, I don't know, of course.

Q. And Osborne was the civil engineer of the Camden and Atlantic Avenue was he not?

A. Yes.

Q. Now, would it not have been entirely feasible for him to have measured when he put the street system on there, the distance between high and low water mark, and wouldn't it have been entirely feasible for Mr. Garrett to have gotten from Mr. Osborne the difference between high and low water mark?

(Objected to as simply asking this witness to guess.)

The Court: Yes, that is too conjectural, the question is overruled Mr. Bourgeois.

Q. When did Mr. Osborne die, if you know?

A. I don't know.

Q. Mr. Ashmead, has the high water mark ever been further oceanward than it is today, up at New Hampshire Avenue? Mr. Carr has asked that question about a dozen times.

A. Well now, of course, I don't know. As far as my recollection goes why it never has been.

Q. Well now, let me refresh your recollection, if I may.  
308 At the present time it runs up to the Boardwalk, doesn't it?

A. Yes.

Q. I show you a map and ask you if you made that map?

A. Well, this is a map made in Ashmead & Hackley's office.

Q. Now, where was the high water line in 1907?

A. Just a few feet outside the Boardwalk.

Q. How many feet outside, right here at Vermont Avenue, how much outside the Boardwalk at Vermont Avenue?

A. Of course, in the first place, the Boardwalk has been widened out twenty feet.

Q. I know that, we will get to that after a while.

A. Take it at Vermont Avenue, what's the question?

(Question repeated.)

A. Fifty feet as shown on this map, but that is not fifty feet outside of the Boardwalk, as it is now.

Q. Yes, all right, don't be afraid to answer, you won't get in any trouble. Now, at New Hampshire Avenue how much is it outside?

A. Twenty feet, that is twenty feet as shown on this map.

The Court: Mr. Ashmead has already testified that the high water mark was further in 1907 than at the present time. He has already testified to that and marked it on this map.

The Witness: At New Hampshire Avenue.

The Court: Never mind that, we have covered all that.  
309 Mr. Bourgeois: I would like to offer this map in evidence.

(Received and marked Exhibit P36.)

Redirect examination.

By Mr. Carr:

Q. Mr. Ashmead, did you at my request attempt to show, physically, to outline a description in the deed from Stern to Nirdlinger, July 17, 1912, recorded in Book 486, page 447?

A. I did.

Q. Will you mark on Exhibit DS as nearly as you can the outlines of the description contained in that deed?

Mr. Carr: The stenographer need not take this.

(Mr. Carr reads description down to the point where it says 770 feet more or less and so forth.)

A. Now, that course, I cannot tell where it goes without having the high water line of 1856. Somewhere there (indicating a point).

Q. Can you put even an approximate location?

Mr. McCarter: How can he "right angles to high water line" he don't know what that is. Now, I don't think that exhibit ought to be filled up with hypotheses.

A. (Continuing:) Now, it begins at the southeast corner of New Hampshire and Dewey, runs east along the south line of  
310 Dewey 190 feet parallel with New Hampshire 350 feet to the high water line of April, 1903. Then it runs east or easterly at right angles to the line of 1856.

Mr. McCarter: Way out here. Out——

A. (Continuing:) Out here according to the distance 770 feet. Then the next distance is not given, down to New Hampshire Avenue.

Q. Well, at any rate, it makes right angles in an easterly direction?

A. It is a right angle to this line, if you knew where that line is.

Q. Connecting from that line to here?

A. Yes.

By Mr. McCarter:

Q. May I ask you a question, is it your idea, referring now to Exhibit D8, that the high water line as you construed it on D8, jumped between 1852 and 1856 as much distance as you would indicate in portraying the deed you have just undertaken to describe?

A. I don't say on the map that that's the high water line.

Q. Well, didn't you construe——

A. Yes, I believe it was in fact.

Q. Your construction of the line of outside sand hills is the high water line, isn't it?

A. Yes, in this particular point?

Q. One moment please. Now, do you wish now to have the Court think that the high water line jumped away out further than the riparian commissioners' exterior radius as shown on Exhibit D8, between 1856 and 1852?

311 A. Yes; I don't believe it was ever out there in 1856.

Q. Well, then didn't the description that you have just drawn bring you out there?

A. Yes, it says to the high water line.

Q. 1856?

A. Gives the distance 770 feet.

Q. That would bring it where?

A. Brings it out to this line.

Q. Way down here to the foot of the arrow on D8, how far?

A. 450 feet outside of the riparian commissioners' line.

Q. How far is that by scale from your assumed line of high water in 1852?

A. 1,200 feet or 1,100 feet.

Q. 1,100 feet. Well, is it your judgment that the high water line jumped 1,100 feet between 1852 and 1856?

A. No, but I don't believe the high water line was ever out there in 1852.

By Mr. Carr:

Q. Mr. Ashmead, was your answer simply upon the assumed accuracy for the purpose of the question, of the description contained in the deed which I referred you to?

A. I don't just understand your question.

Q. Don't understand it myself. Strike it out. In your answer to my question referring to deed reported in Book 486, page 447, did you wish to be understood as locating yourself the high water mark where indicated in that deed?

A. I undertook to locate it as described in that deed.

312 Q. But if that description——

A. Say 770 feet from a certain point, therefore that's 300 feet south of Dewey, then runs out easterly 770.

Q. In other words you simply attempted to show the outlines of the description in that deed?

A. As described in that deed.

Q. You did not attempt to stand sponsor for the high water mark being where the deed said it was?

A. No, sir, I don't think it was there.

By Mr. Bourgeois:

Q. Are you enabled by that description to say where it went? That says easterly to a certain boundary.

A. Yes, to the high water line of 1856.

Q. Did you consider that to mean directly east or in a easterly direction?

A. No, I don't think that's what it means, I think it is easterly because it gives the course, says it is at right angles to the high water line.

Q. Now Mr. Ashmead, I call your attention to Exhibit P5, and assuming that the line of 1852 is correctly delineated on that map, that's the water line, also assuming that the water line of 1870 is correctly delineated on that map, then it follows that the point of the beach and the line of 1852 had been washed away sometime between that and 1876?

A. Yes.

Q. Do you know whether it was washed away between '52 and '56 or not?

A. Not of my own knowledge, no.

Q. But some part of it may have been washed away?

A. Yes, I wasn't there.

313 Q. But if any part of that shore washed away, you don't know how far in that washed?

A. No.

Q. And you don't know what direction the high water mark took in 1856?

A. No.

Q. May have been at right angles to New Hampshire, may it not?

A. Might be.

Q. And it might be that that course would have followed practically down New Hampshire and struck the high water line of 1856 or 770 feet distance?

A. Might have gone almost anywhere, any course.

Q. Mr. Ashmead, you used to be city surveyor, didn't you?

A. Yes.

Q. Will you tell us if Atlantic City did adopt this dedication map as its street system?

A. It did.

The Court: Mr. Ashmead, just indicate if you can, roughly on this map D8, where the low water line shown on the dedication map D9 is.

The Witness: At that point.

The Court: At the point in question here where that bulged out.

The Witness: Here is New Hampshire Avenue 1,065 feet is about what it is. It comes to the edge of the paper.

The Court: Well then, the low water mark as shown on 314 the dedication map would be at the extreme bottom of the paper D8 and bend around to the right—

The Witness: On a curve, curving to the north.

The Court: So as a matter of fact, in 1852 all of this land here was high land or upland?

The Witness: That is—no it was land between the high and low water mark.

The Court: Or land between the low water mark and the line of the sand hills as the case may be.

The Witness: Of course, we don't know where the high water mark was.

The Court: I see. The point marked by the witness is marked D. Then it would come up in this direction?

The Witness: Yes, that's right about the way you have it.

(The course marked by the witness is marked D—D.)

The Court: Have you finished the proof?

Mr. Carr: Yes, except we want the opportunity to authenticate the two geodetic survey maps.

(Hearing adjourned for argument, to Tuesday, October 30, at 10.30 A. M., at Jersey City.)



October 30, 1917.

## Case Continued.

Mr. Carr: Before proceeding to the argument of the case, I wish to ask permission to amend the defendant's answer, in the form indicated in an order, which I now present.

(After discussion with counsel.)

The Court: It appearing that the purpose of the amendment is to set up one of the claims upon which the defendant rests its claim to title to the property in question, and as counsel for the plaintiff frankly admit that assertion of this claim, at this late date, in view of the evidence taken, will not unduly prejudice the plaintiff, I will permit the amendment to be made, upon the understanding that the proofs heretofore offered in respect to the conveyances made, in and about the property in question, and which were embodied in the testimony of Mr. Barrett, shall not be here, or in any other court, objected to as incompetent to prove the facts which he testified to. In other words, his testimony as to the fact of the conveyances and the way in which they were to be made, is to be accepted in lieu of the production of the actual deeds or certified copies thereof.

(The stipulation on page 206 of the transcript is, by consent, amended as follows: After the word, "made" in the 4th line of the stipulation shall be added: "excepting the conveyance from Bartlett to Stevens, which conveyance conveyed upland and also lands under water.")

316 (Plaintiff's counsel offers in evidence abstract of the title from the State to Walter Barrett for riparian grant; conveyance from Walter Barrett back to Stevens the defendant; and also the various conveyances made by Stevens of the lands on the western side of New Hampshire Avenue and immediately adjoining it.)

(Defendant's counsel withdraws from the files of the case, Exhibits D10 and D11 for identification to have certified at Washington, when they will be returned to the files of the case for use as exhibits.)

## EXHIBIT D.

United States District Court, District of New Jersey.

In Equity.

SAMUEL F. NIRDLINGER, Plaintiff,

VS.

HENRY E. STEVENS, JR., Defendant.

*Opinion.*

Suit to Quiet Title of a Certain Parcel of Land in Atlantic City, New Jersey.

On Final Hearing.

George A. Bourgeois and Robert H. McCarter for plaintiff.  
Wilson & Carr for defendant.HAIGHT, *Circuit Judge*:

This suit is primarily instituted under an Act of the New Jersey Legislature entitled "An Act to compel the determination of claims of real estate in certain cases, and to quiet the title to the same." (4 N. J. Compl. Stat. 5399.) The bill also contains allegations which, it is claimed, bring the suit within the general quia timet jurisdiction of a Court of Equity, irrespective of the statute. Accordingly it prays for a decree removing a cloud upon the title of the plaintiff to the land in question, alleged to have been created by a certain riparian grant made by the Riparian Commissioners of the State of New Jersey, for a decree establishing that the defendant has no estate or interest in the land; and for a decree fixing and settling the rights of the parties therein. Some-  
318 time prior to the institution of this suit the present plaintiff and a corporation known as the Dewey Land Company, being at that time tenants in common of the land in question, brought a suit in the Court of Chancery of New Jersey under the same statute against the same defendant and therein sought the same relief in respect to substantially the same property as is sought in the present suit, except that the prayer for relief in the bill in the former suit did not, as does the bill in the present suit, specifically pray for the removal of the before mentioned alleged cloud upon the title. The former suit was duly prosecuted and resulted in a decree dismissing the bill. Upon appeal, the Court of Errors & Appeals of New Jersey affirmed the decree of the Court of Chancery. The plaintiff subsequently and prior to the institution of the present suit acquired the interest of the Dewey Land Company.

1. Naturally the first question which is raised is whether the decree in the former suit is res adjudicata of the issues in the present suit and a bar to the prosecution thereof. In solving that question, the decree actually made and the grounds upon which the same was rested by the respective New Jersey Courts must be considered in connection with the statute under which the bill was filed. The statute was originally passed in 1870 (P. L. 1870 p. 20), and, as set forth in the title, its purpose is not only to quiet titles but to compel the determination of claims to real estate in certain cases, viz., these where one is "in peaceable possession of lands \* \* \*

claiming to own the same and his title thereto or to any part thereof is denied or disputed, or any other person claims a

319 is claimed to own the same or any part thereof, or any interest therein, or to hold any lien or encumbrance thereon, and no suit shall be pending to enforce or test the validity of such title claim or encumbrance." (Sec. 1, 4 Compl. Stat.) As is pointed out by Vice Chancellor Stevenson in *Fittichauer vs. Metropolitan Fire-Proofing Company*, 70 N. J. Eq. 429, 430, takes care of

"those cases of hardship where the defendant out of possession makes a claim while the complainant in possession has no means of compelling the defendant, either at law or in equity, to submit his claim for determination, and thus have it either established as valid or finally declared void. The great object of the statute is not to afford the complainant a new means of asserting and establishing his title, but to afford the complainant a means of compelling the defendant to either abandon or establish his title, or have it decreed invalid."

As is indicated in the last quoted remarks, the Act provides for those cases where the defendant may disclaim all interest in the land, but provides that if he shall answer, claiming any interest therein, he shall in his answer specify and set forth the same, as well as the manner in which and the source through which it is claimed to be derived. These provisions have been construed by the Courts of New Jersey to constitute an answering defendant the real actor in the suit—the plaintiff—so that he must not only set forth in his answer but must maintain by proofs any adverse title or claim which he asserts; and the actual complainant in the suit is under no obligation

to exhibit his own title until after the defendant has shown  
320 his, being required in the first instance to merely establish the jurisdictional facts, viz., that he is in peaceable possession, claiming to own the lands, and that no suit is pending in which the defendant's claim, whatever it may be, can be tested. *Fittichauer vs. Metropolitan Fire-proofing Co.*, supra; *Ocean View Land Co. vs. Loudenslager*, 78 N. J. Eq. 571 (Ct. of E. & A.).

In furtherance of the object of the statute, as expressed in its title, it is provided that when a defendant has answered setting up his claim, except in cases where either party has applied for the framing of an issue at law and a trial thereof by a jury, (with which features of the statute we are not concerned in this case).

"The Court of Chancery shall proceed to inquire into and determine such claims, interest and estate, according to the course and practice of that Court; and shall \* \* \* finally settle and adjudge whether the defendant has any estate, interest or right in, or encumbrance upon said lands, or any part thereof, and what such interest, estate, right or encumbrance is, and in or upon what part of said lands the same exists." (Sec. 5.)

It is further provided in Section 6 that

"The final determination and decree in such suit, shall fix and settle the rights of the parties in said lands, and the same shall be binding and conclusive on all parties to the suit."

The statute, therefore, specifically directs that the final decree in the cause shall (1) finally adjudge whether the defendant has any interest in the property and if so, exactly what it is; and (2) fix and settle the rights of the parties. No other decree is provided for in the statute; nor, except in cases where the complainant has failed to establish the jurisdictional facts of peaceable possession, etc., or something kindred thereto, would any other kind of decree seem to be permissible. In the latter class of cases there must necessarily be, as in practice there has been, I think, a decree simply dismissing the bill. See *Steelman vs. Blackman*, 72 N. J. Eq. 330 (Ct. of C.) and *Oberon Land Co. vs. Dunn*, 60 N. J. Eq. 280 (Ct. of C.). It is thus apparent that in a decision on the merits the ascertainment and settlement of the defendant's interest is the primary and absolutely essential requirement of the statute. The decree of the Court of Chancery of New Jersey in the suit which is set up as a bar to this suit was simply that the complainant's bill be dismissed. No attempt was made to adjudicate the defendant's interest or to settle the rights of the parties in the land. That decree was merely affirmed by the Court of Errors & Appeals; it was in no respect ordered to be modified or changed. The decree of the Court of Chancery (as appears from the unreported memorandum filed by the Chancellor) was based on the conclusion that as the defendant asserted a claim based on a riparian grant of the State made through the Riparian Commissioners, and as the validity of the grant could not be attached collaterally, but only by a direct proceeding instituted for that purpose by or in the name of the Attorney General, the bill, which was held in effect to be such a collateral attack, could not be maintained. The Court of Errors & Appeals disagreed with the ground upon which the Chancellor had dismissed the bill, and held that the complainants might maintain their bill "if they have made out their title." (*Dewey Land Co. vs. Stevens*, 83 N. J. Eq. 314, 316). The Chancellor's decree of dismissal, however, was affirmed on the ground that the deeds, upon which the complainants relied to establish their title, conferred, in fact, no title upon them. Mr. Justice Swayze remarking at the conclusion of his opinion—"We think the complainants fail to establish the title set up in the amended bill; the decree of

dismissal must therefore be affirmed." What, therefore, has the New Jersey decree specifically established and settled? Nothing, it seems to me, but that the complainants in that suit had not established facts sufficient to warrant the relief prayed for in their bill authorized, by the statute, to be given. It established nothing more, for instance, than it would have established had the complainant's bill been dismissed because they had failed to establish that they were in peaceable possession of the locus in quo, as in *Steelman vs. Blackman*, supra; or, as in *Oberon Land Co. vs. Dunn*, supra, because the parties had by their own act made it impossible for the Court to carry out the direction of the statute and by decree fix and settle the rights of the parties in the lands. But it is urged on behalf of the defendants that although the decree did not in form do so, it has actually settled that the defendant's title is superior to that asserted in that suit by the complainants. This contention is based on the proposition that because under the statute, as hereinbefore construed, it was incumbent upon the defendant in the first instance to assert and prove his title before the complainants were called upon to reveal theirs, the Court of Errors & Appeals must have found the defendant's prima facie title, which rested upon the state's riparian grant, was superior to that asserted by the complainants, otherwise the Court would not have affirmed a dismissal of the bill. But this is a non-sequitur. It may be that that decision has established

323 a new jurisdictional requirement, viz., that the plaintiff must establish some kind of title to the land in controversy before the defendant is required to set forth and establish his claim; and in the event of his failure so to do, the Court is not at liberty to entertain a bill filed under the statute in question. On the other hand, its action in merely affirming a dismissal of the bill may have been due to the fact that upon examining the record, it found that the deeds relied upon by the complainants conferred no title upon them, and, consequently, it adopted a practical and convenient way of disposing of the case, and thus rendering it unnecessary for it to determine whether or not the defendant had any interest in the lands; and, hence, it advisedly merely dismissed the bill; the complainants being treated rather as interlopers without a shadow of title. That in a suit instituted under the statute in question, if the decree fixing and settling the rights of the parties in the disputed premises is appealed from and is reversed, the Court of Errors & Appeals must direct what decree is to be entered, is recognized in that Court in *Blackford vs. Conover*, 40 N. J. Eq. 205, 218. Therefore, the Court of Errors & Appeals in the New Jersey suit had intended to fix the rights of the parties in the land in question, it would have remitted the record to the Court of Chancery, with direction to enter such a decree as would have fixed those rights as it adjudged them. I would be loath indeed to hold that a decision in a former case is res adjudicata upon a mere speculation as to what another Court may have meant to decide, especially when its actual decree or judgment is not in harmony therewith. Nor in my judgment is there anything in the opinion of the Court, which was written by Mr. Justice Swayze (a "concurring" opinion having also been

224 written by Judge White), which would justify such a conclusion as defendant contends for. In approaching the discussion of this point, it seems advisable to refer briefly to some of the facts. The locus in quo, which for all practical purposes is the same in this case as it was in the New Jersey case, is situate in Atlantic City, New Jersey, and borders on the Atlantic Ocean. It probably can best be described, and other matters, which it becomes necessary to hereafter discuss, can best be understood, I think, by reference to the following diagram, which is made for convenience of reference to conform as nearly as possible to that in Judge White's opinion in the Dewey Land Company case. It is not drawn to scale.

(Sketch.)

The locus in quo is the triangular piece of property lying east of New Hampshire Avenue and indicated by the shaded lines. In 1852 the entire tract shown on the diagram was fast land and was owned by one Robert B. Leeds. In 1856, and apparently after some of the land had been encroached upon by the ocean, he conveyed it to John McClees, describing it as bounding on "the edge of Absecon Inlet." In 1897 McClees conveyed it to the Atlantic City Beach Front Improvement Company, by a description bounding it on the "high-water mark of Absecon Inlet and the Atlantic Ocean." At that time, as appears on the diagram, the land in question was under water, the ocean in the intervening years having moved inward many feet. Whether the land had been lost by erosion or avulsion, I do not at this point attempt to decide. The predecessors in title of both the defendant and the plaintiff acquired their respective titles to the fast land from the Atlantic City Beach Front Improvement Company. In 1900 the immediate predecessor in title of the defendant, William H. Bartlett, who owned the 325 shore front lot marked "B" on the diagram, procured a riparian grant from the State for the land, then under water, included within the dotted lines shown on the diagram. In 1899 and 1900, respectively, the then upland part of the lot marked "D" on the diagram was acquired by the plaintiff's predecessors in title from the Atlantic City Beach Front Improvement Company. Since that time, the shore front by reason of accretions has moved much further oceanward and is now located approximately as shown on the diagram. It is thus apparent that the triangular piece of the lot marked "D"—the locus in quo—is now fast land and is within the bounds of the riparian grant to Bartlett. In 1910 the Dewey Land Company and the present plaintiff, who then were tenants in common of lot "D," as before stated, filed the before mentioned bill in the Court of Chancery of New Jersey against the present defendant to have the latter's interest in the locus in quo determined and settled. In the original bill in that case, the complainants claimed title to the locus in quo by reason of accretions. Subsequently, however, they amended their bill, eliminated all claim based on accretions and rested their title upon quitclaim deeds taken in 1911 from John McClees and in 1912 from the heirs of Robert B.

Leeds, respectively. This was apparently done under a mistaken notion of the effect of a decision rendered by the Court of Errors & Appeals of New Jersey in *Ocean City Assoc. vs. Shriver*, 64 N. J. L. 550. In the deed from the Leeds heirs, the property was described as running to the high-water mark as it existed in 1852, and in the McClees deed as running to the high-water mark as it existed on April 15, 1853. It is important that the title asserted by the complainants in

the New Jersey suit be borne in mind in ascertaining what the Court of Appeals in New Jersey decided in that suit.

As will be seen by reading the opinion of Mr. Justice Swayze (page 316) and the opinion of Judge White (page 656), it was held that neither of these deeds conferred any title upon the complainants to the locus in quo, for the reasons which are very clearly set forth in Mr. Justice Swayze's opinion. It is entirely clear both from Justice Swayze's opinion and from Judge White's opinion that the New Jersey Court did not attempt to determine what rights, if any, any of the parties to that suit had acquired in the land in question by reason of accretions, and Judge White distinctly says that the question as to what rights the defendant had acquired in the locus in quo by virtue of the riparian grant was not before the Court. What better assurance could there be that the Court did not attempt to decide that question? It is true that Justice Swayze said (page 317):

"If the land was formerly fast land, and the title was lost by erosion, it became the property of the State, not merely as long as it remained under water, but, if the State made a riparian grant absolutely. *Stevens vs. Paterson & Newark Railroad Co.*, 34 N. J. L. 532. Whatever right the former owners might have as against private persons upon the ocean receding, was of no avail against the state's riparian grant; the title lost by erosion was then lost forever, unless it was regained by accretion, and the right of accretion was the compensation of the former owner for his loss; each grantee had the same right."

It was these remarks which called forth the opinion of Judge White.

I do not think that they give any warrant for the conclusion that Justice Swayze meant to say that the riparian grant deprived the owner of lot "D" of such land within the bounds of the riparian grant as might thereafter be formed by accretion, if, in other respects, he would be entitled thereto. It is true that he made a broad statement when he said that "it became the property of the State, not merely as long as it remained under water, but, if the State made a riparian grant, absolutely;" but that statement must be read in the light of what he had just been discussing and what he said afterwards. He had just been discussing not the effect of the riparian grant, but of the title, if any, acquired by the complainants through the deeds which they had received from John McClees and the Leeds heirs. I think that his remarks had reference to the devolution, as respects these grantors, of the title to the property embraced within the original Leeds and McClees deeds.



when it or a part of it became covered with water, and later when it became uncovered by reason of accretions. In the succeeding sentence, Justice Swayze said "the title lost by erosion was then lost forever, unless it was regained by accretion." If this means anything, it is a clear limitation upon the broader statement theretofore made. The case of *Stevens vs. Paterson & Newark Railroad Co.* cited by Mr. Justice Swayze simply held that the State of New Jersey is the absolute owner of the land under all navigable waters, below the ordinary high-water line within its limits and can grant such land to anyone without making compensation to the owner of the shore, with the possible exception of the right to "alluvium and dereliction," pointed out in Judge White's opinion in *Dewey Land Company case*. This case did not hold and in fact the question was not involved, that in making a riparian grant of land under water the State could confer a title upon its grantee which would deprive the owner of the ripa of his right to such accretions as might form in front of his land, within the bounds of the grant, before the grantee might have filled in or otherwise reclaimed the land thus granted to him. As pointed out in Judge White's opinion, the Statute of New Jersey under which the grant in this case was made, provides "that before an independent grantee from the State may fill the land under water in front of the land of a riparian owner who has failed to take out a state grant after notice, such independent grantee must extinguish such riparian owner's right to accretions by paying to him the value thereof, to be fixed by the Riparian Commissioners, subject to an appeal to the Supreme Court and a trial by jury." (*Dewey Land Co. vs. Stevens supra*, 659.) Accordingly, it is not to be presumed that Justice Swayze, by the before mentioned broad statement which he made, considering the circumstances under which he made it the subsequent apparent limitation, and what was actually decided in *Stevens vs. Paterson & Newark Railroad Co.*, intended to lay down as an absolute rule that a riparian grant from the State divested the owner of the ripa, when a different person from such grantee, of his right to land formed by accretions before such grantee had reclaimed the land under water thus granted. This will be more manifest, I think, in the light of the general rules, which will hereafter be discussed, regarding the relative rights of the owner of shore front property and the State and the latter's grantee.

Reverting now to the question of the effect of the New Jersey decree and decision on this suit, as before shown, the determination of whether the defendant has any interest and if so, what it is, is the primary and absolutely essential requirement of the statute. A decree or decision which either expressly or impliedly falls short of that requirement necessarily does not dispose of the case on the merits. It is, of course, elementary that for a judgment in one suit to be a bar to the prosecution of another suit between the same parties or their privies, the point in controversy must be determined on its merits, and if the first suit be dismissed for want of jurisdiction or disposed of on any ground which did not go to the merits of the action, the judgment rendered will prove no bar



to the prosecution of another suit. (Hughes vs. U. S., 4 Wall. 232.) Nor is the practical effect of the decree to bar the present action because of the rule that a judgment on the merits is *res adjudicata* not only as to any matter which was offered to sustain or defeat the claim in controversy, but as to any other matter which might have been offered for that purpose; in other words, I do not think that the fact that the plaintiff in this suit did not assert, with his co-complainant in the New Jersey suit, the title upon which he now relies to defeat the title set up by the defendant, precludes him from now asserting it. That rule has no more application to this case than it would have to a judgment of involuntary non-suit rendered in an action at law, which is based upon the failure of the plaintiff to establish facts entitling him under the law to relief. Such a judgment of course, does not preclude the plaintiff from supplying in a subsequent action facts which he might have supplied in the first action and which would have made out a case entitling him to relief, if not sufficiently answered by the defendant. (Manhattan Life Insurance Co. vs. Broughton, 109 U. S. 121; Beckett vs. Stone, 60 N. J. L. 233.)

23 Cyc. 1136 and cases there cited.) I accordingly conclude that the New Jersey decree is not *res adjudicata* of the questions in this case. If a contrary conclusion were reached there would be presented a situation where, although the title or interest of the defendant had never been settled, neither party would ever be able to procure a decree under the statute, setting at rest the title to the land. Indeed, the practical effect would be to confirm the defendant's claim of title to land of which the complainant was at this time in peaceable possession, not because it had ever been so decreed by any Court, but because in a previous suit the complainant had failed to establish his title. Such a result should, of course, be avoided if possible. This conclusion has made it unnecessary for me to consider whether the fact that the bill in the present suit seeks, quite independently of the statute, to remove a cloud upon the title or whether the fact that the premises in question in this suit do not include the part which was in question in the former suit, viz., the part beyond the present high-water line, has any effect on the question under discussion. As no claim is made in the present suit on account of the deeds upon which the plaintiff and his co-complainant relied in the New Jersey suit, the effect of that decision as respects any question which might have arisen in this case because of these deeds, need not be considered.

2. It is conceded that the plaintiff is in peaceable possession of the land in question, claiming to own the same, and that no suit is pending to test the validity of the title or claim asserted by the defendant; consequently, the jurisdictional facts required by the statute are present. It is also apparent that the plaintiff is without an adequate remedy at law. As he is in peaceable possession of the land

he cannot institute an action in ejectment, and no suit is pending at law wherein the validity of his title and the claim of the defendant can be tested. Under these circumstances it is entirely clear that not only has this Court jurisdiction to enter

tain the bill in this suit and thus administer the New Jersey statute, but that it is its clear duty to do so. *Holland vs. Challen*, 110 U. S. 15; *Reynolds vs. Crawfordsville Bank*, 112 U. S. 405; *Chaplin vs. Brower*, 114 U. S. 158; *Wehrman vs. Conklin*, 155 U. S. 314. In all of these cases, statutes in no material respect different from the New Jersey statute were administered in the Federal Courts. In the last cited case, it was held that such a state statute could not be administered by a Federal Court where the plaintiff had an adequate remedy at law.

3. I am now brought to a consideration of the case on its merits. Both the plaintiff and the defendant claimed to *owe* the locus in quo. The defendant's claim is based both upon the riparian grant from the State and upon accretions to the fast land, of which his predecessor in title was the owner at the time of the riparian grant and of which the defendant is now the owner. The plaintiff's claim of title is likewise based upon accretions to the upland, of which he and his predecessors in title from time to time have been the owners. He also makes claim under the doctrine pertaining to avulsion. The first question on this phase of the case is whether the riparian grant to the defendant's predecessor in title, in and by itself, has conferred any title on the defendant to the locus in quo, in view of the fact that it is now fast land and was not reclaimed by the State's grantee before the accretions had formed it. The solution of that question necessitates the ascertainment of the relative rights of the owner of short front property and the State and the latter's grantee. For all purpose necessary to be considered in this (there are some differences), the rights of the State of New Jersey to lands under navigable waters are the same as those which before the revolution were vested in the Crown of England; the title to the soil beyond the ordinary high-water line being formerly vested in the Crown and since the revolution in the State. (*Bell vs. Gough*, 23 N. J. L. 624, 655; *Stevens vs. Paterson & Newark Railroad Co.* *supra*; *Paul vs. Hazelton*, 37 N. J. L. 106; *Hoboken vs. Pennsylvania Railroad*, 124 U. S. 656. It was the rule of the common law, as it is the rule in New Jersey and elsewhere so far as I know, that as the high-water line shifts from time to time due to erosion, accretion or reliction, the Crown's or State's inland boundary and the outward boundary of the riparian proprietors respectively, shift, so that both are ambulatory, and depend from time to time upon the location of the high-water line. *The King vs. Yarborough*, 3 Barn. & Cress. 91; *In Re Hull & Selby Railway*, 5 M. & U. 325; 151 English Reports (Full Reprint) 139; *Camden & Atlantic Land Co. vs. Lippincott*, 45 N. J. L. 405 (Sup. Ct.); *Ocean City Assoc. vs. Shriver*, 64 N. J. L. 550, 554; *New Orleans vs. U. S.*, 10 Peters 706, 716; *County of St. Clair vs. Lovington*, 23 Wallace 46; *Gould on Waters*, Sec. 155, and cases there cited.) On principle, it would seem to necessarily follow that the State's grantee can acquire no greater rights than the State itself had. If, therefore, the State's inland boundary is ambulatory and it has no title to lands formed by accretions, its grantee can have

none, and must merely acquire a like boundary. The author so hold. I am not now speaking of the right of a grantee under the New Jersey Statute to fill in and reclaim land under water conveyed to him by the State's Riparian Commissioners, upon compensating the owner of the upland, because that right rests on, as I take it, an entirely different principle, viz. that of eminent domain. The leading case on this point is *Scrutton vs. Brown*, decided by the Court of King's Bench in 1825 and reported in 4 Barn. & Cress. 485. One of the questions in that case was whether a conveyance of certain property, lying between high and low-water marks, acquired originally by the grantor from the Crown, conveyed that which from time to time, as the sea encroached upon or receded from the beach, lay between the high and low-water marks or only that which at the time that the deed was made was bounded by the then high and low-water marks. It was held that as the high and low-water marks shifted, the property conveyed by the deed also shifted. In the course of his opinion Judge Bayley said (page 498):

"The question here is, whether there may be a certain quantity of land shifting in situation and vesting in the same persons at different times? That must be the case of land fronting the sea or a river, where, from time to time, the sea or river encroaches or retires. If the sea leaves a parcel of land, the piece left belongs to the persons to whom the shore there belongs. The land between high and low-water marks originally belonged to the crown, and can only vest in a subject as the grantee of the crown. The crown by a grant of the sea-shore would convey not that which at the time of the grant is between the high and low-water marks, but that which from time to time shall be between these two termini. When the grantee has a freehold in that which the crown grants, the freehold shifts as the sea recedes or encroaches. Then what was the object of the parties to the deed of 1773? To grant the land within certain limits. Those to the east and west were ascertained, but those on the north and south were to be ascertained by the high and low-water marks. I think that these words must be construed with reference to the rule of the common law upon the subject of accretion, and that as the high and low water-marks shift the property conveyed by the deed also shifts."

The above rule and the authority of *Scrutton vs. Brown* is approved by the Court of Appeals of New York in *Trustees etc. of East Hampton vs. Kirk*, 84 N. Y. 215, as it is also by the Circuit Court for the Southern District of New York in *De Lancey vs. Wellbreck*, 113 F. 103; in which latter case it was applied in construing a riparian grant of land under water originally made by the British Crown and subsequently sold by the State of New York for failure to pay the rents provided for in the grant. The same principle is recognized by the U. S. Supreme Court in *The County of St. Clair vs. Livingston*, *supra*. It will be noted that at the beginning of the opinion in that case (page 62) Mr. Justice Swayze said: "We shall assume for the purposes of this opinion, that all the title which could

passed by Congress and the State was and is vested in the plaintiff in error." *Serattton vs. Brown* is cited with approval by the New Jersey Courts in *Camden and Atlantic Land Co. vs. Lippincott*, supra; and *Ocean City Land Co. vs. Shriver*, supra, although the precise point now under discussion does not seem to have been involved in either of these cases. Indeed, I think that this rule is recognized by Justice Swayze in the *Dewey Land Company* case because, as before noted, he said: "Title lost by erosion was then lost forever, unless it was regained by accretion."

It is expressly adopted by Judge White in his opinion. Consequently, I have no hesitation in reaching the conclusion that if the plaintiff, by virtue of owning lot "D," is otherwise entitled to the land formed by accretions within the locus in quo, the riparian grant in question conferred no title thereto on the defendant.

The next inquiry then is whether the complainant or the defendant, by reason of being respectively riparian proprietors of the upland, is entitled to the accretions which have formed the locus in quo. On this point, the decisive question is how the lines of their respective properties, so far as including accretions is concerned, should run; whether they should follow exactly or approximately the lines of the riparian grant or whether they should follow lines parallel to New Hampshire Avenue.

This question is by no means free from difficulty. The division of lands formed by accretions among co-terminous riparian proprietors and of lands between high and low-water marks when the title thereto is not vested in the State, as in Massachusetts, has always been a perplexing question and the subject of considerable discussion in the Courts. While I have examined a great many authorities, it would, I think, serve no useful purpose, but would unduly and unnecessarily burden this opinion, to attempt to review them. It is impossible, and the Courts have heretofore so recognized, to formulate a general concrete rule by which all cases can be governed, because of the many varying conditions which each case presents. The fundamental principle, however, which underlies

all the cases is that the division should be equitable and fair according to the conditions of each particular case. In ascertaining what is equitable in any given case, except possibly in some of that class where the actual or presumed agreement of the parties or their predecessors in title has been considered as the decisive factor. (See for instance *Adams vs. Boston Wharf Co.*, 10 Gray, 521, 530) the Courts have been primarily governed by the general rule announced by Chief Justice Shaw in *Deerfield vs. Arms*, 17 Pick. 41, 45; as follows:

"Two objects are to be kept in view, in making such an equitable distribution: one is, that the parties shall have an equal share in proportion to their lands, of the area of the newly formed land, regarding it as land useful for the purposes of cultivation or otherwise, in which the value will be in proportion to the quantity; the other is to secure to each an access to the water and an equal share of the river line in proportion to his share on the original line of the water, regarding such water line in many situations as particularly

useful for forming landing places, docks, quays, and other accommodations, with a view to the benefit of navigation, and such constituting an important ingredient in the value of the land.

That case was specifically approved by the U. S. Supreme Court in *Johnson vs. Jones*, 1 Black, 209, 222. While in *Delaware Lackawanna & Western Railroad vs. Hannon*, 37 N. J. L. 276, the case was not directly involved the question of the division of alluvion between co-terminous riparian proprietors, yet the question which was before the Court was for all practical purposes the same. The case was decided in accordance with the same principle; Chief Justice Beaseley thus expressing it, viz:

337 "It is not probable that any precise formula applicable to every case, can be devised. The principle to work on is, that when practicable, each owner is to have his own shore front; when this is not practicable, he is to have his ratable part of such short front. I do not see how the rule can be further specialized.

In the application of these general principles to particular cases various concrete rules have been adopted. In some cases, it was found that inequalities would result if the side lines separating the upland holdings of the various riparian proprietors were extended over the newly formed land, because of the contour of the new shore front or because of the direction in which the side lines approach the old short front, and for other reasons; while in other cases, it was held that the extension of side lines would divide the new shore front and the newly formed land equitably between the adjoining owners. In still other cases, where the old shore front was in a corner, another method of division was adopted; and in some cases, the side lines have been run perpendicular to the old shore front, etc. A collection of the cases will be found in the foot note of 21 L. J. A. 776 and 25 L. R. A. (New Series) 257; see also Gould vs. Waters, Sections 162-165. But there is still another rule (hereinafter referred to as a possible exception to the general rule) which rests upon and gives effect to the actual or presumed agreement (which may be found from acquiescence or conduct) of the owners (either the present owners or some of their predecessors in title) of the upland as to the boundary lines of lands between high and low water marks, to which they, respectively, are or may become entitled as owners or otherwise. It was upon that ground that the decision

338 of the Court of Chancery of New Jersey in *Stockham vs. Browning*, 18 N. J. Eq. 390, was based. The facts in that case in several important respects are so nearly analogous to the facts in the case at bar as to make the case an important authority. The last mentioned rule has been most frequently applied by the Supreme Court of Massachusetts in the division of the flats (the shore between high and low-water mark) which under an ancient colony ordinance, belong to the riparian proprietors. *Valentine vs. Piper*, 22 Pick. 85; *Piper vs. Richardson*, 9 Metc. 158; *Drake vs. Curtis* (reported in a foot note to *Curtis vs. French*) 9 Cush. 44; *Adams vs. Boston Wharf Co.*, 10 Gray 521; *Attorney General*

Boston Wharf Co., 12 Gray 553; Gerrish vs. Gary, 120 Mass, 133. See also cases cited in Gould on Waters, Sections 162 and 164. It needs no argument to demonstrate that this rule is as applicable to the division of lands formed by accretions, as it is to the division of "flats," as in the Massachusetts cases, or the division of the shore front for wharfage purposes, as in the New Jersey case.

It is now necessary to consider some additional facts, in light of these general rules. As before noted, all of the lands of the plaintiff and the defendant, as well as all land in that vicinity, was originally fast land. In the years intervening between 1852 and 1870, the ocean had encroached to such an extent that all of the lands of the plaintiff and defendant, and considerably more to the north and west and all to the east were under water. The high-water mark at the last mentioned year was, on a curving line, at approximately the intersection of Pacific & Vermont Avenues. Thereafter, the land which had been washed away began to reform. In 1852 all of the property in the vicinity of the locus in quo and for a considerable distance to the west was surveyed and a map made thereof.

339 Between 1852 and 1854 a street system was laid out on this map and an agreement entered into between the various property owners adopting that street system and dedicating the streets shown thereon to the public. On this map, New Hampshire Avenue is shown as extending in a straight line and at right angles to Pacific Avenue to the low-water mark of the Atlantic Ocean, further in distance than it actually extends at the present time. As before stated, John McClees in 1856 had acquired title to a considerable part of the property in the vicinity of the locus in quo, including all of the property owned by the respective parties to this suit. In 1858 he conveyed a plot 160' x 100', lying approximately midway between Pacific & Oriental Avenues, to one Wooton. In this deed, the property was described as lying on the south side of New Hampshire Avenue, 150' from the corner of Pacific Avenue, and the various courses were run in accordance with these two avenues. In 1897 McClees conveyed to the Atlantic City Beach Front Improvement Company a part of the land which he had acquired from Leeds, excepting the lot which he had theretofore conveyed to Wooton, by a deed wherein the first course was stated to begin on the southerly side of Pacific Avenue, 175' east of Vermont Avenue and extending in an easterly direction along Pacific Avenue to the land of the Camden & Atlantic Land Company, thence to the edge of Absecon Inlet, thence along the high-water mark thereof and of the Atlantic Ocean to a point 175' east of Vermont Avenue, and thence north parallel with Vermont Avenue, a certain number of feet to the *placing* beginning. The Atlantic City Beach Front Improvement Company in turn conveyed a parcel of the then up-  
land to a predecessor in title of the defendant by reference to  
340 New Hampshire, Oriental, Atlantic and Pacific Avenues, and made New Hampshire Avenue the easterly boundary of the property. That grantee as well as defendant's immediate predecessors in title conveyed by like reference to the street system, and by

the same easterly boundary. The Atlantic City Beach Front Improvement Company also conveyed to plaintiff's predecessors in title by reference to the same street system and made New Hampshire Avenue the westerly boundary of the property so conveyed, as did likewise each of the plaintiff's subsequent predecessors in title. New Hampshire Avenue is an improved street. Manifestly, there is here a clear recognition by the common grantor of the parties to this suit, as well as by McClees, of New Hampshire Avenue, as laid down on the original map, as a boundary line between at least two portions of the upland. And in this connection it must be borne in mind that the land conveyed by the Atlantic City Beach Front Improvement Company to the predecessors in title of the plaintiff and defendant, respectively, was alluvial land, some of which had been formed by accretions before the Company acquired title from McClees and some of it afterwards. It seems to me that the case thus falls clearly within the principle of the rule last above mentioned. There are differences, I freely admit, between the facts of the cases heretofore cited to support the rule, and the facts of the case at bar, but none which distinguish them in principle. Not only do I think that the owners of all of this land, as it existed in 1854, in dedicating New Hampshire Avenue as a public street, across the same, to and at right angles to the ocean, divided the land into two parts and thus fixed the natural side lines of accretion gains  
341 for those parts, as suggested in Judge White's opinion in the Dewey Land Company case, but the subsequent owners down to and including the plaintiff and defendant, have, by the recognition of New Hampshire Avenue as a boundary line, so divided the upland which in fact had been formed by accretions, as to make it inequitable to adopt any other division lines for accretion gains. Indeed, to do otherwise would be to fail to give effect to what may be clearly presumed, from the conduct and conveyances, of their predecessors in title, was their understanding and intention. In addition, since 1900, there have been recorded some 400 deeds and 200 or 300 mortgages affecting the property in the vicinity of the locus in quo. In all of these, the properties have been described by lines running at right angles to and parallel with the street system—both as respects that which was upland at the time the defendant received his riparian grant, as well as that which has since been formed by accretions. Moreover, the newly formed land in the vicinity of the locus in quo has, to a very great extent, been built upon and large sums of money invested therein. The plaintiff has been assessed and has paid taxes, as well as assessments for improvements on the locus in quo. It is manifest, therefore, that if it should be held that the respective riparian proprietors are entitled to accretions in accordance or approximately in accordance with the lines of their riparian grants (there were riparian grants made at about the same time as the defendant's, both to the west of his land and to the east of the plaintiff's land) a very great confusion in titles would result and the door be thrown open, in the straightening out of the lines, to the making of exorbitant demands.



on the part of those who would thus be held to own parts of lands which has been improved on the assumption that the various riparian proprietors were entitled to accretions on parallel and at right angles respectively to the street system. On the other hand, if it be held that accretions should be awarded in accordance with such street systems, these difficulties will all be avoided and a stability given to titles in that vicinity. I appreciate, of course, that such a holding will result in certain persons holding riparian grants for land under water when they do not own the upland immediately in front thereof. What effect that may have upon the validity of such riparian grants under the New Jersey statutes it is not necessary to determine in this case. Under the rule heretofore adopted, as new land forms hereafter, it is clear the inland boundary of the riparian grant will move oceanward and thus no practical difficulty will be experienced, at least until some attempt has been made by holders of riparian grants to reclaim the land and under water, in ascertaining who is the owner of the land formed by accretions from time to time. It seems entirely clear, therefore, that the land formed by accretions since the riparian grant, or preferably since the Atlantic City Beach Front Improvement Company made its first conveyance to one of defendant's predecessors in title, should be divided in accordance with the street system. If such a course is adopted, and the plaintiff decreed to be entitled to the accretions formed between the easterly line of New Hampshire Avenue and a line beginning the same number of feet east of New Hampshire Avenue as the easterly boundary line of his original upland (as it was when Atlantic City Beach Front Improvement Company conveyed it) is distant therefrom, and running parallel to New Hampshire Avenue, and if the defendant is decreed to be entitled to the accretions formed between like lines on the westerly side of New Hampshire Avenue, it is apparent that each will get approximately an equal share of the newly formed land in proportion to their upland, so far as frontage on the ocean is concerned; each will secure access to the water, and each will have approximately an equal share of the new high-water line of the ocean in proportion to his share of the original line. Such a division will, therefore, be fair and equitable under all of the circumstances, and thus, in addition, will comply with the before mentioned fundamental rules. Whether the riparian proprietors who own lands east of the plaintiff's lands should have the accretions divided among them on lines parallel with New Hampshire Avenue or on lines parallel with Pacific & Oriental Avenues, it is not necessary to decide. I merely make this observation because of one of the points made in the brief of counsel for the defendant. It is true that Judge White, in the opinion which he delivered in the Dewey Land Company case, seems to have expressed an inclination to accept for the division of accretion gains the lines adopted by the Riparian Commissioners in making riparian grants, provided that in any given case, it was not shown that such a division would be unfair. But he also indicated, as before stated, that a different conclusion might be reached if it should be found that



by the dedicating of New Hampshire Avenue, etc., it was inequitable for the State, in making its grant, to have disregarded the lines so fixed. Whether or not the act of the State in disregarding the lines of the streets was inequitable, it is clear for the reasons heretofore given, that it would be inequitable or at variance with the presumed intention or understanding of the predecessors in title of the

344 respective parties to divide the accretions in accordance with the lines of the riparian grant. Upon the whole, therefore,

I will hold that the plaintiff is entitled to all lands formed by accretions between the easterly line of New Hampshire Avenue and a line drawn parallel thereto and distant easterly therefrom the same number of feet as the easterly boundary line of his original upland (as it was when the Atlantic City Beach Front Improvement Company conveyed it) is distant from the easterly line of New Hampshire Avenue. This necessarily results in finding that the defendant has no title by reason of accretions to any part of the locus in quo. As I have heretofore found that he has no title thereto by reason of the State's riparian grant, and as his only claim of title is based on the riparian grant and his right to accretions, it follows that he has no right, title or interest in the locus in quo. This conclusion renders it unnecessary for me to consider whether the doctrine pertaining to lands lost by avulsion and subsequently regained, is applicable to this case, or whether the principle of *Banks vs. Ogden*, 2 Wall. 657, is pertinent. The plaintiff is entitled to a decree to the above effect, with costs.

UNITED STATES OF AMERICA,

*District of New Jersey, ss:*

I, George T. Cranmer, Clerk of the District Court of the United States of America, for the District of New Jersey, in the Third Circuit, do hereby certify the foregoing to be a true copy of the original Opinion on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my  
345 name and affixed the seal of the said Court, at Trenton, in said District, this Twenty-sixth day of December nineteen hundred and nineteen.

[Seal of District Court of the United States, District of New Jersey.]

GEORGE T. CRANMER,

*Clerk District Court U. S.*

By R. S. CHEVRIER,

*Deputy.*

## EXHIBIT E.

United States District Court for the District of New Jersey.

In Equity.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, and Real Estate Title Insurance and Trust Company of Philadelphia, Executors and Trustees under the Will of Samuel F. Nirdlinger, Deceased, Plaintiffs,

vs.

HENRY E. STEVENS, JR., Defendant.

*Final Decree.*

This cause coming on to be heard in the presence of Bourgeois & Coulomb, Esqs., and Robert H. McCarter, Esq., of Counsel with plaintiffs, and Wilson & Carr, Esqs., of Counsel with the defendant, and the bill of complaint with the amendments thereto, the  
346 answer with the amendments thereto, the counter-claim and answer to counter-claim, proofs and exhibits having been read, heard and considered, and the arguments of the respective counsel having been heard, and the Court having considered the same, and it appearing that since the argument of said cause, to wit, on or about the 13th day of November, 1918, Samuel F. Nirdlinger, the plaintiff, departed this life, leaving a last will and testament by which all his title to and interest in lands and premises of which he died seized, including the lands and premises in question in this suit, passed to and became vested in Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance and Trust Company of Philadelphia, the executors and trustees named and designated in the last will and testament of the said Samuel F. Nirdlinger, and that by order of this court duly made on the — day of —, the death of the said Samuel F. Nirdlinger was suggested and it was directed that the said Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance and Trust Company of Philadelphia, Executors and Trustees under the will of Samuel F. Nirdlinger, deceased, be substituted as plaintiffs herein; and it further appearing that there is a valid controversy in this suit between citizens of different states, and that the matters in controversy are of a value, exclusive of costs, of an amount in excess of \$3,000; and it appearing that defendant by his answer admitted title in plaintiffs to so much of the lands described in plaintiff's bill of complaint as lie  
347 Northerly and Easterly of the fourth course described in the deed of the Riparian Commissioners of the State of New Jersey to William H. Bartlett and Elwood S. Bartlett, bearing date the 28th day of June, 1900, recorded in the Office of the Clerk of Atlantic County at May's Landing, New Jersey, in Book No. 248 of Deeds, page 475 &c., hereinafter particularly referred to, but claimed to own so much of the lands described in plaintiffs' bill of complain

as lie Southerly and Westerly of said fourth course in said decree from the Riparian Commissioners of the State of New Jersey to said Bartlett and others, and that defendant by his answer further admitted peaceable possession of the lands in dispute in the plaintiff's bill, and it appearing to the satisfaction of the Court that the suit was referred to the Court of Chancery of New Jersey referred to in the answer and amended answer of said Henry E. Stevens, wherein Dewey Land Company, a corporation of the State of New Jersey, and Samuel F. Nirdlinger were complainants, and Henry E. Stevens and James W. Northup were defendants, in which a final decree was entered in said Court of Chancery on the 7th day of September, 1912, dismissing said bill of complaint, from which final decree an appeal was duly taken by the said complainants to the Court of Errors and Appeals of the State of New Jersey, in which Court the said decree of the Court of Chancery was affirmed by the final decree of the Court of Errors and Appeals entered on the 15th day of June, 1914, it is not res adjudicata of the plaintiffs' claim in this suit and constitutes no bar to the prosecution of this suit; and it further appearing that the defendant's said claims to the lands and premises in litigation herein and hereinafter particularly described are not valid claims, and that the said defendant has no estate or interest in said lands either by virtue of a riparian grant from the State of New Jersey by Foster M. Vorhees, Governor, Willard C. Fisk, William K. Kloke, John I. Holt, and John J. Farrell, Riparian Commissioners, to William H. Bartlett and Elwood S. Bartlett, bearing date the 28th day of June, 1900, and recorded in the Office of the Riparian Commissioners of the State of New Jersey, in Liber N, folio 245 &c., and also in the Office of the Clerk of Atlantic County, New Jersey, in Book No. 248 of Deeds, page 475 &c., that said William H. Bartlett and Elwood S. Bartlett being predecessors in title of the defendant, Henry E. Stevens, or by virtue of accretions, as was claimed by the defendant and set up in this cause, and no further claim being set up by the said answers, pleading, or otherwise, and none other appearing, and the plaintiffs appearing to be entitled to the relief prayed for in the said bill of complaint.

It is thereupon, on this 24th day of May, A. D. 1920, by the United States District Court for the District of New Jersey, ordered, adjudged and decreed, and the said Court, by virtue of its power and authority, doth hereby order, adjudge and decree that the said suit in the Court of Chancery hereinabove specifically referred to wherein Dewey Land Company and Samuel F. Nirdlinger were complainants, and Henry E. Stevens and James W. Northup were defendants, which was appealed to the Court of Errors and Appeals of the State of New Jersey, and the matters and things therein decided are not res adjudicata of the issues herein contained, and constitute no bar to the plaintiffs prosecuting this suit.

It is further ordered, adjudged and decreed that said defendant has no right, title or interest in or encumbrance upon the said lands and premises in dispute in this action, namely, all that certain tract or parcel of land and premises situate, lying and being in the City

of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

349 Beginning at the intersection of the fourth course or description contained in the riparian grant from the State of New Jersey, by Foster M. Vorhees, Governor, Willard C. Fisk, William Kloeke, John I. Holt and John J. Farrell, Riparian Commissioners, to William H. Bartlett, and Elwood S. Bartlett, bearing date the 28th day of June, 1900, recorded in the Office of the Riparian Commissioners of the State of New Jersey in Liber N, Folio 245, &c., also in the Office of the Clerk of Atlantic County, New Jersey, in Book No. 248 of Deeds, page 475, &c., with the Easterly line of New Hampshire Avenue; thence Southeasterly in and along said fourth course of said deed to the high water mark of the Atlantic Ocean; thence Southwesterly, in and along the high water mark of the Atlantic Ocean to the Easterly line of New Hampshire Avenue; thence Northerly, in and along the Easterly line of New Hampshire Avenue, to the place of beginning.

And that the lands and premises described in complainant's bill of complaint, to wit, all that certain tract or parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

Beginning at the intersection of the Southerly line of Dewey Place with the Easterly line of New Hampshire Avenue, thence extending Eastwardly, in and along the Southerly line of Dewey Place, 190 feet; thence Southwardly, parallel with New Hampshire Avenue, 442 feet more or less to the high water mark of the Atlantic Ocean; thence Southwesterly, along the high water mark of the Atlantic Ocean to the Easterly line of New Hampshire Avenue; thence Northwardly, in and along the Easterly line of New Hampshire Avenue, 577 feet more or less to the place of beginning; are the lands  
350 and premises of Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance and Trust Company of Philadelphia, Executors and Trustees under the will of Samuel F. Nirdlinger, deceased, and the said defendant, Henry E. Stevens, Jr., has no estate, interest in or encumbrance upon the same or any part thereof, and that in respect to all of said lands and premises hereinabove last described, so far as relates to any claim thereon by or on behalf of the above named defendant, the title of the plaintiffs in and to the same and every part thereof is hereby determined, fixed and settled, and declared to be good.

It is further ordered, adjudged and decreed that the cloud cast upon plaintiffs' lands by the riparian grant made by the State of New Jersey and hereinabove particularly referred to, so far as the same overlaps the lands hereinabove last described, is decreed to be null and of no effect, and that the lands and premises hereinabove last described are hereby decreed to be relieved of and clear from the lien or cloud occasioned by said riparian grant and by the said deed from the State's grantees to William H. Bartlett and Elwood S. Bartlett, defendant's predecessors in title.

It is further ordered, adjudged and decreed that defendant do pay to the plaintiffs their costs of suit to be taxed, and that they have execution therefor according to the rules and practice of this court.

THOMAS G. HAIGHT,  
Judge.

Approved as to form.  
CARR & CARROLL,  
*Attys. of Deft.*

351

*Assignment of Errors.*

United States District Court for the District of New Jersey.

In Equity.

SAMUEL F. NIRDLINGER, Plaintiff,

vs.

HENRY E. STEVENS, JR., Defendant.

*Assignment of Errors.*

Now comes the defendant in the above-entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above-entitled cause, from the decree made by this Honorable Court on the twenty-fourth day of May, nineteen hundred and twenty.

## I.

That the United States District Court for the District of New Jersey erred in adjudging that the suit in the New Jersey Court of Chancery, wherein Dewey Land Company and Samuel F. Nirdlinger were complainants, and Henry E. Stevens, Jr., and James W. Northup were defendants, and which was appealed to the Court of Errors and Appeals of the State of New Jersey, and the matters and

352 things therein decided were not res adjudicata of the issues herein contained, and that the said suit constituted no bar to the plaintiff in prosecuting this suit; whereas this Court should have decreed that the said suit in the New Jersey Court of Chancery and the decree entered therein were res adjudicata of the issues herein contained, and did constitute a bar to the plaintiff in the prosecution of this suit.

## II.

That the United States District Court for the District of New Jersey erred in adjudging that the defendant Henry E. Stevens, Jr. had no right, title or interest in or encumbrance upon the lands and premises in dispute in this action; whereas the Court should have adjudged that the said defendant was lawfully seized in fee simple of all of the lands and premises described in paragraph 4e of the answer.

and lying eastwardly of the easterly line of New Hampshire Avenue, and more particularly described as follows:

Beginning at the intersection of the easterly line of New Hampshire Avenue with the fourth course in the description of tract No. 2 described in paragraph 4c of the answer of this defendant; thence extending southwardly along the easterly line of New Hampshire Avenue extended to a point in the exterior line established by the riparian commissioners where it is intersected by the easterly line of New Hampshire Avenue extended southwardly; thence eastwardly along said exterior line curving to the left on a radius of 4,000 feet to where the said exterior line intersects the fourth course of said description; thence northwestwardly in a straight line to a point intersecting the easterly line of New Hampshire Avenue, being the place of beginning.

353 And that the title of the defendant to the said lands is paramount to and exclusive of any title of the plaintiff therein or thereto, and should upon such adjudication have directed the plaintiff to execute a proper instrument in writing, duly acknowledged, retracting any claim to the lands owned by defendant, and particularly described in paragraph 4e of the answer, and that the plaintiff, his servants and agents, be perpetually enjoined from making any claim thereto arising out of any matter or thing set forth in the bill of complaint, and from making or attempting to make any conveyance, lease, assignment or transfer of any interest in said lands particularly described in paragraph 4e of said answer where said conveyance, lease, assignment or transfer is based upon any alleged right or claim of the plaintiff existing at the time of the filing of the bill.

### III.

That the United States District Court for the District of New Jersey erred in adjudging that "the cloud cast upon plaintiff's lands by the riparian grant made by the State of New Jersey (particularly referred to in said decree), so far as the same overlaps the lands last described in said decree, is decreed to be null and void and of no effect, and that the lands and premises in said decree last above described are hereby decreed to be relieved of and clear from the lien or cloud occasioned by the said riparian grant and by the said deed from the State's grantees to William H. Bartlett and Elwood S. Bartlett, defendant's predecessors in title"; whereas the Court should have decreed that defendant's title under said riparian deed was a valid and subsisting fee simple title paramount to and exclusive of all title, claim, interest or demand of said plaintiff.

354

### IV.

That the United States District Court for the District of New Jersey erred in that it ordered, adjudged and decreed that the defendant pay to the plaintiff his costs of suit to be taxed, and that he have execution therefor according to the rules and practice of this Court;

whereas no costs should have been taxed against this defendant, but on the contrary should have been taxed against the plaintiff.

Wherefore, the appellant prays that said decree be reversed and that the District Court of the United States for the District of New Jersey be ordered to enter a decree accordingly.

\_\_\_\_\_  
*Attorneys for Appellant.*

355

*Docket Entries.*

United States District Court, District of New Jersey.

In Equity.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, and REAL ESTATE TITLE  
INSURANCE AND TRUST COMPANY OF PHILADELPHIA

VS.

HENRY E. STEVENS, JR.

Oct. 26, 1914. Bill filed.  
 " 27, " Subpœna issued.  
 Nov. 2, " Subpœna returned defendant not found in District  
           and filed.  
 " 23, " Affidavit of Harry R. Coulomb filed.  
 " " " Order for Publication filed.  
 Feb. 13, 1915. Appearance of Wilson & Carr, Solicitors for defend-  
           ant, filed.  
 " 15, " Notice of motion for further and better statement of  
           claim, &c., filed.  
 Mar. " " Hearing on motion for further and better statement  
           of claim, &c., Motion granted.

356

May 15, " Answer filed.  
 " 25, " Order amending bill of complaint, filed.  
 July 12, " Notice of Motion to separately hear paragraph 5 of  
           Answer before trial, filed.  
 " " " Order to separately hear paragraph of Answer, &c.,  
           filed.  
 Sept. 7, " Hearing on part of Answer. Motion for Decree for  
           Defendant. Motion denied.  
 " 14, " Cause placed on Calendar.  
 Oct. 6, " Amendment to Answer, filed.  
 " 7, " Order amending Bill of complaint, filed.  
 " " " Complainants' answer to counter-claim filed.  
 Nov. 3, " Cause placed on Calendar.  
 Mar. 1, 1916. Notice of trial, filed.  
 Sept. 5, " Cause placed on Calendar.  
 Nov. 8, " " " " "  
 " 21, " Notice of Motion to dismiss Bill, filed.  
 Dec. 11, " Hearing on motion to dismiss bill. Decision reserved.

Jan. 16, 1917. Cause placed on Calendar.  
 " " " Continued for Term.  
 Apr. 3, " Cause placed on Calendar.  
 June 7, " Memorandum, filed.  
 Aug. 20, " Notice of trial, filed.  
 Oct. 9, " Order amending bill and Answer to counter-claim  
 filed.  
 " " " Trial before the Court.  
 " 10, " " " " "  
 " 11, " " " " "  
 " 9, " Order amending answer, filed.

357-360

Nov. 1, " Trial before the Court. Decision reserved.  
 Dec. 26, 1919. Opinion filed.  
 " " " Testimony before Court filed.  
 May 24, 1920. Petition to substitute parties complainant filed.  
 " " " Order for substitution of parties complainants filed.  
 " " " Order amending Bill filed.  
 " 25, " Final Decree for complainants with costs, filed.  
 Nov. 19, " Assignment of Errors, filed.  
 " " " Petition for Appeal and Allowance, filed.  
 " 27, " Bond on Appeal, filed.  
 " " " Citation issued.  
 Dec. 7, " Citation returned, service acknowledged. Copy filed.

361 & 362 United States Circuit Court of Appeals for the Third  
 Circuit.

No. 2642.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, and REAL ESTATE TITLE  
 Insurance and Trust Company of Philadelphia, Executors and  
 Trustees under the Will of Samuel F. Nirdlinger, Deceased, Re-  
 spondents,

vs.

HENRY E. STEVENS, JR., Appellant.

On Appeal from United States District Court for the District of New  
 Jersey.

EXHIBITS.

Carr & Carroll, Attorneys for Appellant.



363 EXHIBITS.

United States Circuit Court of Appeals for the Third Circuit.

No. 2642.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, and REAL ESTATE TITLE Insurance and Trust Company of Philadelphia, Executors and Trustees under the Will of Samuel F. Nirdlinger, Deceased, Respondents,

VS.

HENRY E. STEVENS, JR., Appellant.

On Appeal from United States District Court for the District of New Jersey.

EXHIBITS.

By agreement between counsel for the appellant and respondents the following exhibits are not to be printed or produced, the same in the judgment of counsel, not being necessary to a decision of the controversy:

*Respondents' Exhibits to be Omitted.*

Exhibit P1.....	Page 125
“ P2.....	“ 202
“ P3.....	“ 218
“ P4.....	“ 234
“ P5.....	“ 265
“ P6.....	“ 265

(This is the same as Exhibit C8 in the printed record of 364 Dewey Land Co. vs. Stevens, at page 67, which record is Exhibit D1 in this case.)

Exhibit P7.....	Page 266
“ P8.....	“ 266

(See record Dewey Land Co. vs. Stevens, page 73, Exhibit D4.)

Exhibit P13.....	Page 267
“ P14.....	“ 268

Exhibits P30, P31, P32, P33, P34 and P35 sufficiently appear in the Appeal Record, and it is agreed that it is not necessary to print the same in full. These exhibits are paged as follows:

Exhibit P30.....	Page 276
“ P31.....	“ 276
“ P32.....	“ 277
“ P33.....	“ 277
“ P34.....	“ 277
“ P35.....	“ 277

*Appellant's Exhibits to be Omitted.*

Exhibit D1.....Page 87

(This is the printed record in the case of Dewey Land Co. vs. Stevens, consisting of 115 pages. But one copy of this record is available. If the Court desires additional copies, appellant's counsel, upon being so advised, will have same re-printed, in which case it will be necessary to return to appellant's counsel original Exhibit D1 in order that the same might be sent to the printer.)

Exhibit D5 .....	Page 89
" D10.....	" 99
" D11.....	" 99
" D12.....	" 159
" D13.....	" 169

NOTE.—Exhibit D6 (printed with the exhibits) has annexed to it and forming a part thereof, a map of the riparian grant. As this grant is shown as a part of map, Exhibit D8, the map annexed to D6 has been omitted. On Exhibit D8 the grant is identified as a riparian grant from the State of New Jersey to Bartlett.

Exhibit D8.....Page 92

(Three blue prints have been made for the information of the Court.)

Exhibit D9.....Page 93

(Rowand map of Absecon Beach. Only one copy is available.)

NOTE.—Exhibit D1, is not bound with the printed exhibits, but is included in the package of exhibits forwarded to the clerk.

Exhibit D-9 is bound in with printed exhibits marked with red ink "No. 1."

Exhibit D-8 is bound in with printed exhibits marked with red ink "No. 2," also in copy marked "No. 1."

366 EXHIBIT P9.

*Deed.*

John McClees

to

Jonah Wooton.

Dated Mar. 19, 1858.  
Rec. April 17, 1858.  
Book K page 507.  
Consideration \$300.00.  
Premises situate Atlantic City.

Beg. at a point in the S. side of N. H. Ave. 150 ft. from intersection of Pac. and N. H. Aves., thence

- (1) Along South side of N. H. Ave. S. E. 100 ft.,
- (2) On a line at Right angles to N. H. Ave. S. W. 160 ft.,
- (3) N. W. and par. to S. line of N. H. Ave. 100 ft.,
- (4) N. E. on a line parallel to E. line of Pac. Ave. 160 ft. to the beg.

#### EXHIBIT P10.

##### *Deed.*

John McClees

to

Jacob R. Eby.

Dated Jan. 10, 1860.

Rec. Mar. 29, 1860.

Book M. page 708.

Tract #1—Beg. at a point in the S. line of Pac. Ave. 40 ft. E. from the S. E. cor. of Pac. and Vt. Ave., thence

- (1) Along said Pac. Ave. E. 135 ft. to the edge of Pac Ave.
- (2) S. and par. with Vt. Ave. a distance of 337 ft. in line of land belonging to Jacob R. Eby.
- (3) N. W. along the said line 364 ft. to the beg.

367

#### EXHIBIT P11.

##### *Deed.*

Camden and Atlantic Land Co.

to

John McVey.

Dated Feb. 26, 1858.

Rec. Mar. 29, 1860.

Book M. page 710.

Premises Atlantic City.

Beginning at a point in the S. line of Pac. Ave. between the lands of Manassa McClees and the said Land Co., 40 ft. E. from the E. line of R. I. Ave., thence

- (1) Along the S. side of Pac. Ave. N. 67 deg. E. for a distance of 400 ft. to a point in the land of boundary between the lands of John McClees and the said Land Co., 40 ft. E. of the E. line of Vermont Ave.,

- (2) Along the said line of boundary of land of John McClees and Land Co., S. 44¼ deg. E. 650 ft. m. or l. to the Surf line,

(3) Along the said Surf line 400 ft. More or less on a West course to its intersection with the line of boundary of said land of Manassa McClees and Land Co.,

(4) Along said line of boundary of Manassa McClees and Land Co. N.  $44\frac{1}{4}$  deg. W. 650 ft. m. or l. to a point in the S. side of Pac. Ave. and the place of the beg.

368

## EXHIBIT P12.

*Deed.*

John McVey and Harriet, His Wife; Jacob R. Eby and Elizabeth G.,  
His Wife,

to

John McClees.

Dated Jan. 10, 1860.

Rec. Apr. 10, 1872.

Book 42, page 189.

Premises situate Atlantic City.

Lot #2—Beg. at a point in the dividing line between McClees and McVey 67 ft. N. W. of Oriental Avenue; thence

(1) S. and parallel with Vermont Ave. crossing Oriental Ave. 175 ft. E. of the Vermont Ave. to low water line;

(2) E. along low water line to a point in the aforesaid dividing line;

(3) N. W. along dividing line and crossing Oriental Ave. to beg.

369

## EXHIBIT P15.

*Deed.*

No. 7.

John McClees

to

The Atlantic City Beach Front Improvement Co.

Dated March 9th, 1897.

Recd. March 15th, 1897.

Book 211, page 174.

Consideration \$20,000.

Grant and habendum to successors and assigns.

Acknowledged March 9th, 1897, in Atlantic County, before Clifton C. Shinn, Master in Chancery, by the party of the first part.

Conveys the following,—

Beginning on the Southerly side of Pacific Avenue, 175 feet East of Vermont Avenue, and extending thence East 746 feet, more or less, to line of Camden and Atlantic Land Company; thence South  $44\frac{1}{2}$  degrees East by same 336 feet, more or less, to edge of Absecon Inlet; thence South by high water mark of Absecon Inlet and the Atlantic Ocean 1,024 feet, more or less, to point 175 feet East of Vermont Avenue, thence North parallel with Vermont Avenue 650 feet, more or less, to the place of beginning.

Excepts the following lot:

Beginning on the West side of New Hampshire Avenue 150 feet South of Pacific Avenue, and extending thence West parallel with Pacific Avenue 160 feet; thence South parallel with New Hampshire Avenue 100 feet; thence East parallel with Pacific Avenue 160 feet to New Hampshire Avenue; thence North by same 100 feet to beginning.

370

EXHIBIT P16.

*Deed.*

No. 21.

The Atlantic City Beach Front Improvement Co.

to

Charles G. Henderson, Jr., J. Franklin Moss, John C. Hancock.

Dated November 1st, 1899.

Recd. November 6th, 1899.

Book 237, page 208.

Consideration \$20,000.

Grant and habendum to Heirs and assigns.

Covenant of special warranty.

Proven November 1st, 1899, in Atlantic County before Burrows C. Godfrey, Master in Chancery, by Clifton C. Shinn, Secretary of The Atlantic City Beach Front Improvement Co.

Conveys the following,—

Beginning in the South line of Pacific Avenue, 280 feet East of New Hampshire Avenue, and extending thence East by Pacific Avenue (crossing Main Avenue) to line of land now or late of the Camden and Atlantic Land Company; thence South  $44\frac{1}{2}$  degrees East by said line 336 feet, more or less, to Absecon Inlet or Atlantic Ocean; thence South by high water mark of said Inlet and Ocean to point 90 feet East of New Hampshire Avenue, if extended; thence North parallel with New Hampshire Avenue (crossing Oriental Avenue 60 feet wide and Dewey Place 50 feet wide) to a point 100 feet South of Pacific Avenue; thence East parallel with Pacific Avenue 190 feet; thence North parallel with New Hampshire Avenue 100 feet to beginning.

371

## EXHIBIT P17.

*Deed.*

No. 22.

The Atlantic City Beach Front Improvement Co.

to

The States Avenue Land Co.

Dated May 24th, 1900.

Recd. May 28th, 1900.

Book 244, page 418.

Consideration \$23,500.

Grant and habendum to its successors and assigns.

Proved May 24th, 1900, in Atlantic County, before Robert H. Ingersoll, Master in Chancery, by Clifton C. Shinn, Secretary of The Atlantic City Beach Front Improvement Co.

Conveys the following,—

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue and at the Southeast corner of Dewey Place (50 feet wide), and extending thence South along New Hampshire Avenue 160 feet, more or less, to high water mark of Atlantic Ocean; thence East by same to point 90 feet East of New Hampshire Avenue; thence North parallel with New Hampshire Avenue, 160 feet, more or less, to the South line of said Place; thence West by same 90 feet to beginning.

372

## EXHIBIT P18.

*Deed.*

No. 30.

Charles G. Henderson, Jr., Mary A., His Wife; J. Franklin Moss, Carrie H., His Wife; John C. Hancock, Carrie D., His Wife,

to

Roland Conrow.

Dated April 14th, 1903.

Recd. April 17th, 1903.

Book 287, page 76, &amp;c.

Consideration \$1.

Grant and Habendum to heirs and assigns.

Acknowledged April 14th, 1903, in Atlantic County before Samuel C. Kulp, Attorney at Law, by parties of the first part.

Conveys the following,—

Beginning in the South line of Pacific Avenue, 280 feet East of New Hampshire Avenue, and extending thence East along Pacific Avenue 120 feet to the West line of Maine Avenue; thence South along same 460 feet, more or less, to high water line of Ocean; thence in line of Maine Avenue extended to high water line of the Ocean as in 1856; thence South along same to point 90 feet East of New Hampshire Avenue, extended; thence North parallel with same and 90 feet therefrom to the South line of said Place; thence East along same 190 feet; thence North parallel with Maine Avenue crossing said Place 240 feet to beginning.

Together with right, title and interest of the parties of the first part of, in and to lands under water lying to the West and South of the centre lines of Maine Avenue extended.

Subject, nevertheless, to following conditions and restrictions to wit: That no building shall ever be erected on any of the 373 lots fronting on the Southerly side of Dewey Place within the distance of 290 feet from New Hampshire Avenue and running in depth 80 feet within 10 feet of the front property line of Dewey Place, nor nearer the side property lines than 3 feet, provided that any person owning two or more contiguous lots may build upon any part thereof so long as they remain one entire tract; provided that such building be not within 3 feet of the side lines of such entire tract.

#### EXHIBIT P19.

*Deed.*

No. 13.

Roland Conrow, Maud M., His Wife,

to

The States Avenue Land Co.

Dated April 14th, 1903.

Recd. April 17th, 1903.

Book 286, page 113.

Consideration \$1.

Grant and habendum to Successors and assigns.

Acknowledged April 15, 1903, in Atlantic County, before John O. Wilson, Master in Chancery, by the parties of the first part. Conveys the following,—

Beginning in the South line of Dewey Place, 90 feet East of New Hampshire Avenue, and extending thence East along Dewey Place 100 feet by South 350 feet, more or less, to present high water mark in the Atlantic Ocean, and still oceanward to high water mark as existed in 1856.

374 Together with all interests of the parties of the first part of, in and to lands under waters of the Atlantic Ocean lying

between the boundaries of the land above described and oceanward thereof.

Subject to restrictions in deed recorded in Book 287, page 76, (item No. 30).

## EXHIBIT P20.

*Deed.*

No. 37.

The States Avenue Land Co.

to

The Dewey Land Co.

Dated December 19th, 1904.

Recd. January 11th, 1905.

Book 313, page 363.

Consideration \$1.

Grant and habendum to successors and assigns.

Proved December 31st, 1904, in Atlantic County, before H. W. Lewis, Master in Chancery, by Robert H. Ingersoll, Secretary of the party of the first part.

Conveys the following,—

Beginning in the East line of New Hampshire Avenue, 240 feet South from Pacific Avenue, said beginning point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East, parallel with Pacific Avenue, and along the South line of said place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to high water line of the Atlantic Ocean; thence Southwest along same the several courses and distances thereof to the East line of New Hampshire Avenue; thence North along same 438 feet, more or less, to beginning.

375

## EXHIBIT P21.

*Deed.*

No. 41.

Dewey Land Company

to

Samuel F. Nirdlinger.

Dated December 9th, 1907.

Recd. April 8th, 1908.

Book 382, page 19.

Consideration \$9,000.

Grant and habendum to heirs and assigns.



Proved March 30th, 1908, in Atlantic County, before J. Wharton Stokes, Master in Chancery, by Robert H. Ingersoll, Secretary of Dewey Land Company.

Conveys the following,—Undivided one-fourth interest in:

Beginning in the East line of New Hampshire Avenue 240 feet south from Pacific Avenue, being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East, parallel with Pacific Avenue, along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to high water line of Atlantic Ocean; thence Southwest along same the several courses &c. to the East line of New Hampshire Avenue; thence North by same 438 feet, more or less, to beginning.

Together with all Riparian Rights had or to be purchased by the party of the first part in connection with said property.

Subject to rights of Atlantic City in said premises for Boardwalk or Park purposes.

376

EXHIBIT P22.

*Deed.*

No. 42.

Dewey Land Company

to

Samuel F. Nirdlinger

Dated January 20th, 1909.

Recd. January 22nd, 1909.

Bk. 395, page 271.

Consideration \$3,333.

Grant and habendum to his heirs and assigns.

Acknowledged January 20th, 1909, in Camden County, before Clement R. Lippincott, Commissioner of Deeds, by Robert H. Ingersoll, Secretary of Dewey Land Company.

Conveys the following: Undivided one-twelfth interest in:

Beginning in the East line of New Hampshire Avenue, 240 feet South from the South line of Pacific Avenue, said point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East parallel with Pacific Avenue and along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to the high water line of the Atlantic Ocean; thence Southwest along said high water line of the Atlantic Ocean the several courses and distances thereof to the Easterly line of New Hampshire Avenue; thence North along the East line of New Hampshire Avenue 438 feet, more or less, to beginning.

Together with all riparian rights had or to be purchased by the said party of the first part in connection with said property.

377 Subject to the rights of the City of Atlantic City in said above described premises for Boardwalk or Park purposes.

The said party of the first part having previously conveyed to the said Samuel F. Nirdlinger an equal undivided one-fourth part in said above described lands and premises (Book 382, page 19), and this deed conveys unto the said party of the second part an equal undivided one-twelfth part in the said above described lands, the said party of the second part holds and has vested in him upon the execution hereof an equal undivided one-third part or interest in said lands and premises herein described.

EXHIBIT P23.

*Deed.*

No. 43.

Dewey Land Company

to

Samuel F. Nirdlinger, Professionally Known as Samuel F. Nixon.

Dated February 10th, 1909.

Recd. February 16th, 1909.

Book 398, page 116.

Consideration \$6,666.66.

Grant and habendum to his heirs and assigns.

Proved February 10th, 1909, in Atlantic County, before George A. Elvins, Comr. of Deeds of New Jersey, by Robert H. Ingersoll, Secretary of Dewey Land Company.

Conveys one-sixth part in following,—

Beginning in the East line of New Hampshire Avenue, 240 feet

378 South from the South line of Pacific Avenue, said point being the Southeast corner of New Hampshire Avenue and Dewey Place, and extending thence East, parallel with Pacific Avenue and along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 294 feet, more or less, to high water line of the Atlantic Ocean; thence Southwest along said high water line of the Atlantic Ocean the several courses thereof to the Easterly line of New Hampshire Avenue; thence North along the East line of New Hampshire Avenue 438 feet, more or less, to beginning.

Together with all riparian rights had or to be purchased by the said party of the first part in connection with said property.

Subject to the rights of the City of Atlantic City in said above described premises for Boardwalk or Park purposes.

## EXHIBIT P24.

*Deed.*

No. 57.

Dewey Land Company

to

Louis E. Stern.

Dated July 17th, 1912.

Recd. July 22nd, 1912.

Book 486, page 443 &amp;c.

Consideration \$1.

Grant and habendum to his heirs and assigns.

No covenant.

Proved July 20th, 1912, in Atlantic County, before George A. Bourgeois, Master in Chancery, by R. H. Ingersoll, Secretary of Dewey Land Company.

Remise, release and forever quit-claim the following,—

379      Beginning at the intersection of the South line of Dewey place with the East line of New Hampshire Avenue and extending thence East along the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 350 feet, more or less, to high water line of Atlantic Ocean as it existed on April 14th, 1903; thence East at right angles to high water line of the Atlantic Ocean as it existed in 1856, 770 feet, more or less, to said high water line as it then existed; thence Southwest along the high water line of the Atlantic Ocean as existed in 1856 to point in said high water line where the same would be intersected by the East line of New Hampshire Avenue, extended; thence North in the East line of New Hampshire Avenue, extended 1,120 feet, more or less, to beginning.

## EXHIBIT P25.

*Deed.*

Samuel F. Nirdlinger

to

Louis E. Stern.

Dated July 17, 1912.

Acknowledged July 17, 1912.

Recorded July 22, 1912.

Book No. 486 of Deeds, page 455.

Consideration \$1.00.

Conveys all that certain tract or parcel of land situate in the City of Atlantic City, in the County of Atlantic and State of New Jersey, particularly described as follows:

Beginning at the intersection of the Southerly line of Dewey Place with the Easterly line of New Hampshire Avenue, thence extending (1) Easterly in the Southerly line of Dewey place one hundred and ninety feet to a point; (2) Southerly, parallel with New Hampshire Avenue eleven hundred and twenty feet more or less to the high water line of the Atlantic Ocean as it existed in eighteen hundred and fifty-six; (3) Southwesterly in and along said high water line to the intersection of the Easterly line of New Hampshire Avenue extended; (4) Northerly in the Easterly line of New Hampshire Avenue extended, eleven hundred and twenty feet more or less to the place of beginning.

EXHIBIT P26.

*Deed.*

No. 59.

Louis E. Stern (Single)

to

Samuel F. Nirdlinger.

Dated July 17th, 1912.

Recd. July 22nd, 1912.

Book 486, page 447.

Consideration \$1.

Grant and habendum to his heirs and assigns.

Covenant of special warranty.

Acknowledged July 20th, 1912, in Atlantic County, before George A. Bourgeois, Master in Chancery of New Jersey, by Louis E. Stern.

Conveys undivided one-half part of the following.—

Beginning at the intersection of the South line of Dewey Place with the East line of New Hampshire Avenue, and extending thence East in the South line of Dewey Place 190 feet; thence South parallel with New Hampshire Avenue 350 feet, more or less, to high water line of the Atlantic Ocean as it existed on April 14th, 1903; thence East at right angles to high water line of the Atlantic Ocean as it existed in 1856, 770 feet, more or less, to high water line as it then existed; thence Southwest along the high water line of the Atlantic Ocean as it existed in 1856 to point in said high water line where the same would be intersected by the East line of New Hampshire Avenue, extended; thence North in the East line of New Hampshire Avenue, extended, 1,120 feet, more or less, to beginning.

## EXHIBIT P27.

*Deed.*

No. 60.

Louis E. Stern (Single)

to

Dewey Land Company.

Dated July 17th, 1912.

Recd. July 22nd, 1912.

Book 486, page 450 &amp;c.

Consideration \$1.

Grant and habendum to its successors and assigns.

Covenant of special warranty.

Acknowledged July 20th, 1912, in Atlantic County, before George A. Bourgeois, Master in Chancery by party of the first part.

Conveys undivided one-half part of the following,—

Beginning at the intersection of the South line of Dewey  
382 Place with the East line of New Hampshire Avenue, and  
extending thence East in the South line of Dewey Place 190  
feet; thence South parallel with New Hampshire Avenue 350 feet,  
more or less, to the high water line of the Atlantic Ocean as it ex-  
isted on April 14th, 1903; thence East at right angles to the high  
water line of the Atlantic Ocean as it existed in 1856, 770 feet, more  
or less, to said high water line as it then existed; thence Southwest  
along the high water line of the Atlantic Ocean as it existed in  
1856 to point in said high water line where same would be inter-  
sected by the East line of New Hampshire Avenue extended; thence  
North in the East line of New Hampshire Avenue extended 1,120  
feet, more or less, to beginning.

## EXHIBIT P28.

*Deed.*

No. 63.

Dewey Land Company

to

Samuel F. Nirdlinger.

Dated February 4th, 1914.

Recd. February 6th, 1914.

Book 523, page 47 &amp;c.

Consideration \$5,000.

Grant and habendum to his heirs, executors, administrators and assigns.

Covenant of General Warranty.

Proved February 4th, 1914, in Camden County, before Clement R. Lippincott, Commissioner of Deeds, by Emerson Richards, Secretary of Dewey Land Company.

Conveys undivided one-half interest part of the same premises as described in deed, item No. 60.

383

## EXHIBIT P29.

In Chancery of New Jersey.

Between

DEWEY LAND COMPANY et al., Complainants,

and

HENRY E. STEVENS, JR., et al., Defendants.

On Bill, &c.

*Petition for Order Amending Final Decree.*

To his Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of the defendants, Henry E. Stevens Jr., and James W. Northup, respectfully shows the following:

1. A final decree was entered in the above entitled cause on the seventh day of September, nineteen hundred and twelve, dismissing the bill of the complainants; and said final decree was appealed to the Court of Errors and Appeals, and was affirmed by the final decree of that court entered on the fifteenth day of June, nineteen hundred and fourteen.

2. The suit of the complainants upon which said final decree was entered, was a suit to quiet title to certain lands, to which the complainants asserted title on the strength of certain quit-claim deeds, and the defendants upon a certain deed from the Riparian Commissioners of the State of New Jersey, both of which claims are fully set forth in the printed state of the case.

3. The final decree was first entered by the Chancellor, after the filing of a memorandum or opinion (appearing at page 108  
384 of the State of the Case), and because of the reasons expressed in said opinion. With regard to the title put forward by the defendant, Henry E. Stevens, Jr., it was stated in said opinion as follows:

"In this case title to part of the land thus made is claimed by the defendants in virtue of a riparian grant by the State made June 28, 1900, which antedates the complainants' conveyance."

(State of the Case, p. 109, lines 6 to 10.)

"The defendants admit that the complainants' claim of ownership of the lands made by accretions is disputed, and they deny that the complainants have any title thereto within the lines of the tract acquired from the Bartletts by deed dated April 25th, 1905 (which includes the riparian grant), and that such portion of the lands so conveyed as laid below the high-water line of the Atlantic Ocean as that line existed in May 1900, was conveyed by the State to the Bartletts, under whom they claim, in the riparian grant of June 28th, 1900. In this position they are correct in point of fact, and are also entitled to prevail as matter of law."

(State of Case, page 110, lines 21 to 33.)

3. That said final decree of the Court of Errors and Appeals was entered after the filing of an opinion by the said Court (reported in 90 Atl. 1040), and because of the reasons expressed in said opinion. With regard to the title claimed by the defendant, Henry E. Stevens, Jr., it was set forth in that opinion as follows:

"The defendants claim under a riparian grant from the State on June 28, 1900. \* \* \* In the present case, if the land did  
385 not belong to the state, its grant was in effective; if the land belonged to the state at the time of the grant by reason of then being under tide water, but has reverted to its former owners by matters arising after the grant, the complainants are not in the position of question- the grant, but of conceding its validity and claiming that the title thereby granted has since ceased to be effective. \* \* \* Whatever right the former owners might have as against private persons upon the ocean receding was of no avail against the state's riparian grant. The title lost by erosion was then lost forever, unless it was regained by accretion. \* \* \* We think the complainants fail to establish the title set up on the amended bill. The decree of dismissal must therefore be affirmed with costs."

(9 Atl. 1041, to 1042.)

4. The ground for the dismissal by the Chancellor of the complainant's bill, for the affirmation of such action by the Court of Errors and Appeals, was the superior and absolute title of the defendant, Henry E. Stevens, Jr., in the premises in question conveyed by the State's riparian grant, which grant both courts found passed fee simple an absolute title, which was in turn conveyed to the present defendant and the superior title of the defendant, James W. Northup, in the premises in question conveyed by mortgage deed of William H. Bartlett and Elwood S. Bartlett et ux., to the Girard Trust Company.

5. By reason of both and each of the said opinions the defendant, Henry E. Stevens, Jr., was entitled to a decree adjudging that he

had an estate in fee simple absolute in said lands, of which the complainants were in possession, and that he, the defendant, 386 was immediately entitled to the full possession and enjoyment of the said lands; and the defendant James W. Northup was entitled to a decree adjudging that he had a valid and subsisting first mortgage lien upon the said land.

6. But that the final decree entered by the Chancellor as hereinabove referred to was in form merely a general decree of dismissal of the complainants' bill, being in words as follows:

"This matter coming on to be heard on the second day of February, nineteen hundred and twelve, in the presence of Robert H. Ingersoll and George A. Bourgeois, of counsel with the complainants, and of Wilson & Carr, of counsel with the defendants; and the court having heard and considered the proofs, and the arguments of respective counsel; and it appearing to the satisfaction of the court that the complainants are not entitled to any relief whatsoever by reason of the matters and things in their bill of complaint contained and set forth, and that said bill ought to be dismissed with costs;

It is thereupon on this seventh day of September, nineteen hundred and twelve, on motion of Wilson & Carr, solicitors for and of counsel with the defendants, ordered that the complainants' bill of complaint be and the same is hereby dismissed with costs.

And it is further ordered that a fee of one hundred and fifty dollars be and the same is hereby allowed to the solicitors of the defendants, and the same to be taxed as part of the costs of this suit and to be collectible therewith."

And said decree did not include a statement of the rights of the defendants as enunciated by the opinions of the courts hereinabove referred to, whereby the defendants have been de- 387 prived of the relief to which they were justly and equitably entitled, and which at the time the decree was entered they had the right to demand should be duly embodied in said decree.

Wherefore your petitioners pray that the aforesaid final decree entered in the above entitled cause by the Chancellor on the seventh day of September, nineteen hundred and twelve, be amended to read as follows:

"This matter coming on to be heard on the second day of February, nineteen hundred and twelve, in the presence of Robert H. Ingersoll and George A. Bourgeois, of counsel with the complainants, and of Wilson & Carr, of counsel with the defendants; and the court having heard and considered the proofs, and the arguments of respective counsel; and it appearing to the satisfaction of the court that the complainants have no estate or interest in that part of the lands set forth in the bill of complaint, and more particularly described in paragraph 7a of the answer of the defendant, Henry E. Stevens, Jr., in this cause as follows:



All that certain tract and parcel of land and premises situate in the City of Atlantic City, County of Atlantic and State of New Jersey, bounded and described as follows:

Beginning at the intersection of the easterly line of New Hampshire Avenue with the fourth course in the description of tract No. 2 as described in paragraph 6*d* of the said answer; thence extending southwardly along the easterly line of New Hampshire Avenue extended to a point in the exterior line established by the

388 Riparian Commissioners where it is intersected by the easterly line of New Hampshire Avenue extended southwardly; thence eastwardly along said exterior line curving to the left on a radius of four thousand feet to where the said exterior line intersects the fourth course of the said description; thence northwestwardly in a straight line to a point intersecting the easterly line of New Hampshire Avenue, being the place of beginning; and that the complainants are not entitled to any relief whatsoever by reason of the matters and things in their bill contained and set forth, and that said bill ought to be dismissed with costs; and

It further appearing that the defendant Henry E. Stevens, Jr., has an estate in fee simple absolute in said lands, of which the complainants are in possession, and immediately entitled to full possession and enjoyment of the same; and that the defendant, James W. Northup, has a valid and subsisting first mortgage lien upon said land:

It is, thereupon, on this seventh day of September, nineteen hundred and twelve, on motion of Wilson and Carr, Solicitors for and of counsel with the defendants, ordered, adjudged and decreed that the complainants have no estate or interest in the lands set forth in their bill of complaint, and more particularly described above, and that the complainants' bill be and the same is hereby dismissed with costs.

And it is further ordered, adjudged and decreed that the defendant Henry E. Stevens, Jr., has an estate in fee simple absolute in said lands of which the complainants are in possession and that

389 the said defendant is immediately entitled to the full possession and enjoyment of the same.

And it is further ordered, adjudged and decreed that the defendant, James W. Northup has a valid and subsisting first mortgage lien upon said land.

And it is further ordered that a fee of one hundred and fifty dollars be and the same is hereby allowed to the solicitors of the defendants, and the same to be taxed as part of the costs of this suit and to be collectible therewith."

And your petitioner will ever pray, &c.

WILSON & CARR,  
*Solicitors for Petitioner.*

STATE OF NEW JERSEY,  
*County of Camden, ss:*

Harvey F. Carr being duly sworn according to law, on his oath says, that he is a member of the firm of Wilson and Carr, solicitors for Henry E. Stevens, Jr., and James W. Northup, and that he had

in his personal charge the conduct of the litigation referred to in the foregoing petition, and that the matters and things in said petition set forth are true.

HARVEY F. CARR.

Sworn to and subscribed before me this twenty-first day of September, A. D. 1915.

WALTER R. CARROLL,  
*Notary Public of New Jersey.*

390

EXHIBIT D2.

*Deed.*

No. 10.

The Atlantic City Beach Front Improvement Co. to William H. Burkard.

Dated November 9th, 1899.

Recd. November 13th, 1899.

Book 238, page 204.

Consideration \$1.

Grant to ——— and assigns.

Habendum to heirs and assigns.

Proven November 9th, 1899, in Atlantic County, before G. A. Bourgeois, Master in Chancery by Clifton C. Shinn, Secretary of The Atlantic City Beach Front Improvement Company.

Conveys the following:

Beginning at Southwest corner of New Hampshire and Oriental Avenues, and extending thence West by Oriental Avenue 175 feet; thence South at right angles with Oriental Avenue 50 feet, more or less, to high water mark of the Atlantic Ocean; thence East by same 188 feet, more or less, to West line of New Hampshire Avenue; thence North by same 24 feet, more or less, to the place of beginning.

391

EXHIBIT D3.

*Deed.*

No. 11.

The Atlantic City Beach Front Improvement Co. to William H. Burkard.

Dated November 9th, 1899.

Recd. November 29th, 1899.

Book 240, page 99 &c.

Consideration \$1,000.

Grant to heirs and assigns.

Habendum to heirs and assigns.

Proven November 24th, 1899, in Atlantic County, before Robert E. Stephany, Master in Chancery, by Clifton C. Shinn, Secretary of The Atlantic City Beach Front Improvement Co.

Conveys the following:

Beginning at the Southwest corner of New Hampshire and Oriental Avenues, and extending thence West by Oriental Avenue 175 feet; thence south at right angles to Oriental Avenue 50 feet, more or less, to high water mark in the Atlantic Ocean; thence East by same 188 feet, more or less, to the West line of New Hampshire Avenue; thence North by same 24 feet, more or less, to beginning.

392

EXHIBIT D4.

*Deed.*

No. 12.

William H. Burkard, Mary L., His Wife, to William H. Bartlett,  
Elwood S. Bartlett.

Dated November 9th, 1899.

Recd. November 29th, 1899.

Book 237, page 387.

Consideration \$48,000.

Grant and habendum to heirs and assigns.

Acknowledged November 24th, 1899, in Atlantic County, before John C. Risley, Commissioner, by parties of the first part.

Conveys the following:

No. 1. Beginning at the Northwest corner of New Hampshire and Oriental Avenues (400 feet South of Pacific Avenue) and extending thence West by Oriental Avenue 175 feet; thence North parallel with New Hampshire Avenue 250 feet; thence East parallel with Oriental Avenue 15 feet; thence South parallel with Oriental Avenue 160 feet to the West line of New Hampshire Avenue; thence South by same 150 feet to beginning.

No. 2. Beginning at the Southwest corner of New Hampshire and Oriental Avenues, and extending thence West by Oriental Avenue 175 feet; thence South at right angles to Oriental Avenue 50 feet, more or less, to high water mark of the Atlantic Ocean; thence East by same 188 feet, more or less, to the West line of New Hampshire Avenue; thence North by same 24 feet, more or less, to beginning.

393

EXHIBIT D6.

I hereby certify, that the within is a true copy of Grant by the State of New Jersey to William H. Bartlett and Elwood S. Bartlett,

dated June 28th, 1900, and recorded in the office of the Riparian Commission of New Jersey in Liber N., page 245 &c.

[SEAL.]

JOHN C. PAYNE,

*Secretary Riparian Commission of New Jersey.*

May 1st 1911.

THE STATE OF NEW JERSEY:

To all to whom these presents shall come or may concern, Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved March 21st, 1871, entitled "A further supplement to an act entitled 'An act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State,'" approved April eleventh, one thousand eight hundred and Sixty-four, and other acts and joint resolutions of the Legislature of said state, William H. Bartlett and Elwood S. Bartlett, of the City of Atlantic City in the County of Atlantic and State of New Jersey, being the owners of lands fronting on the Atlantic Ocean in the City of Atlantic City in the County of Atlantic and State of New Jersey, which lie above high water mark and in front of which the lands under water hereinafter described are situated, has applied to the Riparian Commissioners of said State

394 for a grant of the said lands under water, and to have the said Commissioners fix the boundaries of the said lands under water, and determine the price or compensation to be paid to the said State therefor, and the terms and conditions of said grant:

And Whereas, the said Riparian Commissioners to wit: Foster M. Voorhees, Governor, Willard C. Fisk, William Cloke, John I. Holt and John J. Farrell, having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned upon the terms herein set forth, and have determined the sum of Nine Hundred and Thirty 00-100 (\$930.00) Dollars, as the price or reasonable compensation to be paid to the State for the said lands.

Now Therefore, the said State of New Jersey, by the said Riparian Commissioners, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained, and the said sum of Nine Hundred and Thirty 00-100 (\$930.00) Dollars duly paid by the said William H. Bartlett and Elwood S. Bartlett to the said State, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants, conditions and limitations herein contained, unto the said William H. Bartlett and Elwood S. Bartlett and to their heirs and assigns forever—All that parcel of land flowed by tide water lying at Atlantic City, in the County of Atlantic and State of New Jersey described as follows:

Beginning at a point in the high water line of the Atlantic Ocean as the same existed in May, 1900, said point being distant 325 feet southerly at right angles from the southerly line of Pacific Avenue

and 175 feet easterly at right angles from the easterly  
 395 line of Vermont Avenue, and from said beginning point  
 southerly parallel with Vermont Avenue and distant 175 feet  
 easterly at right angles from the easterly line of the same, 185 feet  
 to a point in the easterly line of lands under water granted by the  
 State of New Jersey to Walter B. Dick, December 28th, 1899; thence  
 southeasterly in a straight line and along the easterly line of lands  
 as above granted to Walter B. Dick 729 38-100 feet to a point in the  
 Exterior Line established by the Commissioners appointed under the  
 authority of the act entitled "An Act to ascertain the rights of the  
 State and of Riparian owners in the lands lying under the waters  
 of the bay of New York and elsewhere in this State" approved April  
 11th, A. D. 1864 and the supplements thereto; said point being  
 distant 378 feet northeasterly along said Exterior Line from where  
 it is intersected by the easterly line of Vermont Avenue extended  
 southerly; thence northeasterly along said Exterior Line curving  
 to the left on a radius of 4,000 feet, 494 feet to a point; thence north-  
 westerly in a straight line 744 39-100 feet to a point in the high  
 water line of the Atlantic Ocean where the same is intersected by  
 the westerly line of New Hampshire Avenue said point being distant  
 250 feet southerly from the southerly line of Pacific Avenue; thence  
 southwesterly along said high water line to the place of beginning.

Subject, however, to such right, title and interest in and to the  
 premises hereby conveyed as were conveyed in and by a certain grant  
 or conveyance made by the State of New Jersey to the United States  
 of America dated August 17th, 1878, and recorded in the office of  
 the Riparian Commission of the State of New Jersey in Liber D.  
 page 260.

With the right and privilege, under the covenants and con-  
 396 ditions of this grant, to exclude the tide-water from so much  
 of the lands above described as lie under tide-water by filling  
 in or otherwise improving the same, and to appropriate the lands  
 under water above described to their exclusive private uses.

(The following eight lines erased)

(1) And also under like terms, covenants, conditions and limi-  
 tations, all and singular (2) the lands under water lying between the  
 exterior line for solid filling and the exterior (3) line for piers, as  
 fixed by the Commissioners appointed under the authority of the  
 act (4) aforesaid and the supplements thereto, and bounded by  
 the — and (5) — lines of the first described tract extended — (6)  
 to said pier line; but said land last described is not to be used for  
 any purpose whatsoever (7) except the erection of a pier or piers  
 thereon, underneath which the tide may ebb and (8) flow, and no  
 solid filling shall be placed thereon.

Provided, that the State of New Jersey, by its Riparian Com-  
 missioners or any other lawful authority, may, from time to time,  
 change the exterior lines for solid filling and piers, and fix the same  
 further from the shore than formerly, even though such action may  
 affect the lands hereby granted, whenever the State may deem it  
 necessary for its interest so to do; and if such exterior lines shall  
 be placed out further from the shore than formerly, then the party

or parties claiming under this instrument may, within such period as may be fixed by the State, either through said Riparian Commissioners or any other lawful authority, have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms, as shall be fixed by said Commissioners or other lawful authority, under any present or future law of this State; such additional land to be used for solid filling and for piers respectively as directed by the said Commissioners or their successors, or other lawful authority, under any present or future law of this State.

And Also Provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of, and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Ocean.

And Also Provided, that if the said William H. Bartlett and Elwood S. Bartlett are not the owners of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part or parts of said land which joins land not owned by the said, William H. Bartlett and Elwood S. Bartlett.

And Also Provided, that if the exterior line for solid filling and the exterior line for piers, or either of said lines, now established, or lines that may be hereafter established by the Riparian Commissioners or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the

United States Government, and the grantee herein or any party claiming hereunder shall suffer damages, the claim or claims therefor must be made against the authorities of the United States Government, and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid, unto the said William H. Bartlett and Elwood S. Bartlett and to their heirs and assigns forever.

NOTE.—Eight printed lines on 3rd page erased before execution.

JOHN C. PAYNE.

In Witness Whereof, The said Commissioners have hereunto respectively set their hands, and these presents have been signed by the Governor, and the Great Seal of the said State has been hereunto

affixed and attested by the Secretary of State, this twenty-eighth day of June in the year nineteen hundred.

FOSTER M. VOORHEES,  
*Governor.*

WILLARD C. FISK.

JOHN I. HOLT.

WM. CLOKE.

JOHN J. FARRELL.

Witness:

JOHN C. PAYNE.

Attest:

[The Great Seal of the State of New Jersey.]

GEORGE WURTS,  
*Secretary of State.*

399 STATE OF NEW JERSEY,  
*County of Hudson, ss:*

Be it remembered, That on this twenty-ninth day of June nineteen hundred 1900 before me the subscriber a Master in Chancery of New Jersey personally appeared John C. Payne who being by me duly sworn on his oath, saith that he saw Foster M. Voorhees, Governor, Willard C. Fisk, William Cloke, John I. Holt and John J. Farrell, the within named Commissioners, sign and deliver the within deed as their voluntary act and that he, the said John C. Payne thereupon subscribed his name as an attesting witness thereto.

JOHN C. PAYNE.

Sworn and subscribed before me, at Jersey City the day and year aforesaid.

GEORGE L. RECORD,  
*Master in Chancery of New Jersey.*

(Endorsed on Back:) Copy. Riparian Commission of New Jersey. Recorded in Liber N, Folio 245 &c. The State of New Jersey to William H. Bartlett and Elwood S. Bartlett. Grant. Dated June 28th, 1900.

400

EXHIBIT D7.

This indenture, made the Twenty-fifth day of April in the year of our Lord One Thousand Nine Hundred and five (1905) Between William H. Bartlett (single man), Elwood S. Bartlett and Ellen I. his wife, all of Atlantic City, in the County of Atlantic and State of New Jersey, parties of the first part, and Henry E. Stevens, Jr., of the City and State of New York, party of the second part.

Witnesseth, that the said parties of the first part, for and in consideration of the sum of One Dollar and other valuable considera-



tions lawful money of the United States of America, well and truly paid by the said party of the second part, to the said parties of the first part, at and before the en sealing and delivery of these presents, the receipt whereof is hereby acknowledged have granted, bargained, sold, aliened, enfeofed, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, enfeof, release, convey and confirm unto the party of the second part, his Heirs and Assigns, all the following described lots of lands and premises, situate, lying and being in the City of Atlantic City, in the County of Atlantic and State of New Jersey, and bounded and described as follows:

Beginning in the Westerly line of New Hampshire Avenue, Two Hundred and Fifty (250) feet Southward from the Southerly line of Pacific Avenue; thence Westwardly, parallel with Pacific Avenue, One Hundred and Sixty (160) feet; thence Northwardly, parallel with New Hampshire Avenue, One Hundred (100) feet; 401 thence Westwardly, parallel with Pacific Avenue, Fifteen (15) feet; thence Southwardly parallel with New Hampshire and Vermont Avenues, Two Hundred and Fifty (250) feet to the Northerly line of Oriental Avenue; thence continuing the same course, parallel with said New Hampshire and Vermont Avenues, and crossing Oriental Avenue and high water line to the exterior line of the Riparian Commissioners; thence along said exterior line, curving to the left with a radius of four thousand feet, six hundred and seventy feet, more or less, to the Easterly line of a grant made by the State of New Jersey, by the Governor and Riparian Commissioners, to William H. Bartlett and Elwood S. Bartlett, dated June 28th, 1900, and recorded in Book 248, page 475; Thence Northwestwardly, in a straight line, being the Easterly line of the lands described in such grant, crossing high water mark, and Oriental and New Hampshire Avenues, to the place of beginning.

The above described lands being, so far as that portion thereof which lies below high water mark is concerned, subject to the provisions, conditions and agreements contained in two several grants.

Together with all and singular, the buildings, improvements, woods, ways, rights, liberties, privileges, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof: And Also all the estate, right, title, interest, property, possession, claim and demand whatsoever, both in law and equity, of the said parties of the first part, of, in, and to the premises, with the appurtenances.

To have and to hold the said premises, with all and singular the appurtenances, unto the party of the second part his Heirs 402 and Assigns, to the only proper use, benefit and behoof of the said party of the second part his Heirs and assigns, forever:

And the said William H. Bartlett and Elwood S. Bartlett, for themselves, their and each of their Heirs, Executors and Administrators do by these presents covenant, grant and agree to and with the said party of the second part, his Heirs and Assigns, that they the said William H. Bartlett and Elwood S. Bartlett, their and each



of their Heirs, all and singular the hereditaments and premises hereinabove described and granted, or mentioned and intended to be so, with the appurtenances unto the said party of the second part, his Heirs and Assigns, against them the said William H. Bartlett and Elwood S. Bartlett, their and each of their Heirs, and against all and every other person or persons whomsoever lawfully claiming or to claim the same or any part thereof shall and will warrant and forever defend.

In witness whereof, the said parties of the first part to these presents hereunto set their hands and seals dated the day and year first above written.

WILLIAM H. BARTLETT. [S.]  
 ELWOOD S. BARTLETT. [S.]  
 ELLEN I. BARTLETT. [S.]

Signed, Sealed and Delivered in the presence of  
 F. C. ROBBINS.

STATE OF NEW JERSEY,  
*Atlantic County, ss:*

Be it Remembered that on this Twenty Fifth day of April in the year of our Lord one thousand Nine Hundred and Five, before me, a Commissioner of Deeds for New Jersey, personally appeared William H. Bartlett, Elwood S. Bartlett and Ellen I. Bartlett, who, I am satisfied, are the grantors mentioned in the above deed or conveyance, and I having first made known to them the contents thereof, They acknowledged that they signed, sealed and delivered the same as their voluntary act and deed; and the said Ellen I. Bartlett being of full age, on a private examination, apart from her said husband, before me acknowledged that She signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband, all of which is hereby certified.

FREDERICK ROBBINS,  
*Commissioner of Deeds.*

Deed. William H. Bartlett et als. to Henry E. Stevens, Jr. Dated April 25, 1905. Received May 6th 1905, and recorded in the Clerk's Office of Atlantic County, at 8.12 A. M. in Book 316 of Deeds, Folio 487 &c. Lewis P. Scott, Clerk. Chg. West Jersey Title and Guaranty Company.

405 In the United States Circuit Court of Appeals for the Third  
Circuit, March Term, 1921.

No. 2642.

HENRY E. STEVENS, JR., Appellant,

vs.

ARTHUR S. ARNOLD et al., Appellees.

And afterwards, to-wit, on the twenty-first day of April, 1921, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Hon. Joseph Buffington, Hon. Victor B. Woolley and Hon. J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the second day of August, 1921, come the parties aforesaid by their counsel aforesaid, and the Court now being fully advised in the premises, renders the following decision:

406

*Opinion.*

In the United States Circuit Court of Appeals for the Third Circuit,  
March Term, 1921.

No. 2642.

HENRY E. STEVENS, JR., Appellant,

vs.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, and REAL ESTATE TITLE  
Insurance and Trust Company of Philadelphia, Executors &  
Trustees under the Will of Samuel F. Nirdlinger, Deceased,  
Appellees.

On Appeal from the District Court of the United States for the  
District of New Jersey.

*Per Curiam:*

This suit, instituted in the District Court to try the title to land made by accretions to fast-land on the ocean-front of Atlantic City, was brought under a statute of New Jersey (4 Comp. Stat. 5399) providing procedure almost the precise opposite of that of the common law action of ejectment. It followed a like action brought with respect to the same land in the state court (Dewey Land  
407 Co. vs. Stevens, 83 N. J. Eq. 314) and there dismissed. The decree from which this appeal is taken overruled the defense of res adjudicata and determined the title to the land in question—in so far as it was affected by the claim of the defendant—to be in the plaintiff. The principles on which this decree was grounded

were given by Judge Haight in an opinion written with great care and elaboration. 262 Fed. 591. As we are in complete accord with all his views we find no occasion to repeat them in an opinion of our own. We therefore affirm the decree below on the opinion filed.

Endorsements: 2642. Opinion Per Curiam. Received & Filed Aug. 2, 1921. Saunders Lewis, Jr., Clerk.

408

*Mandate.*

In the United States Circuit Court of Appeals for the Third Circuit,  
March Term, 1921.

No. 2642 (List No. 22).

HENRY E. STEVENS, JR., Appellant,

vs.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, and REAL ESTATE TITLE Insurance and Trust Company of Philadelphia, Executors & Trustees under the Will of Samuel F. Nirdlinger, Deceased, Appellees.

Appeal from the District Court of the United States for the District of New Jersey.

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed with costs.

Philadelphia, August 2, 1921.

VICTOR B. WOOLLEY,

*Circuit Judge.*

Endorsements: 2642. Order Affirming Judgment. Received & Filed Aug. 2, 1921. Saunders Lewis, Jr., Clerk.

409 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the District Court of the United States for the District of New Jersey, Greeting:

Whereas, lately in the District Court of the United States for the District of New Jersey, before you or some of you, in a cause between Henry E. Stevens, Jr., (defendant below) Appellant, and Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance & Trust Company of Philadelphia, Executors and Trustees under the Will of Samuel F. Nirdlinger, Deceased, (plaintiffs below)

a decree was entered in the said District Court on the twenty-fourth day of May, 1920, which decree is of record in the office of the Clerk of said District Court, to which reference is hereby made, and the same is hereby expressly made a part hereof.

409½ as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Third Circuit by virtue of an appeal agreeably to the Act of Congress, in such case made and provided, more fully and at large appears.

410 And whereas, in the present term of March, in the year of our Lord one thousand nine hundred and twenty-one, the said cause came on to be heard before the said United States Circuit Court of Appeals on the said transcript of record and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs; and that the said Appellees, Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance & Tr. Co. of Phila., executors and trustees under the will of Samuel F. Nirdlinger, deceased, recover against the said Appellant, in the sum of Twenty Dollars (\$20) for their costs herein expended, and have execution therefor.

Philadelphia, August 2, 1921.

411 You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable William Howard Taft, Chief Justice of the Supreme Court of the United States, at Philadelphia, the second day of September, in the year of our Lord one thousand nine hundred and twenty-one (1921).

SAUNDERS LEWIS, JR.,

*Clerk of the U. S. Circuit Court of Appeals, Third Circuit.*

Costs of Arthur S. Arnold et al.:

Clerk.....	\$—.—
Printing Record	\$—.—
Attorney.....	\$20.00
	<hr/>
	\$20.00

[Endorsed:] Original File No. 2642. U. S. Circuit Court of Appeals, Third Circuit, March Term, 1921. No. 22. Henry E. Stevens, Jr., Appellant, vs. Arthur S. Arnold et al., Appellees. Copy of Mandate. Received & Filed Sep. 2, 1921. Saunders Lewis, Jr., Clerk.

412 & 413      *Certificate Clerk Circuit Ct. of Appls.*

UNITED STATES OF AMERICA,  
*Eastern District of Pennsylvania,*  
*Third Judicial Circuit, Set:*

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original record and proceedings of this Court in the case of: Henry E. Stevens, Jr., Appellant, vs. Arthur S. Arnold, et al., Appellees, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 13th day of October in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the United States the one hundred and forty-fifth.

[Seal of the United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,  
*Clerk of the U. S. Circuit Court of Appeals, Third Circuit.*

## 414      United States Circuit Court of Appeals for the Third Circuit.

HENRY E. STEVENS, JR., Petitioner,

VS.

ARTHUR S. ARNOLD, ABRAM L. ERLANGER, and REAL ESTATE TITLE Insurance and Trust Company of Philadelphia, Executors and Trustees under the Will of Samuel F. Nirdlinger, Deceased, Respondents.

On Certiorari.

*Stipulation.*

It is stipulated by and between counsel herein, that the certified copy of the transcript of the record now on file in this court may be taken and considered as a return to the writ of certiorari issued herein.

Dated, January 19, 1922.

HARVEY F. CARR,  
*Attorney for Petitioner.*  
GEO. A. BOURGEOIS,  
H. R. COULOMB,  
BOURGEOIS & COULOMB,  
*Attorneys for Respondents.*

Endorsements: 2642. Stipulation of Counsel as a Return to Writ of Certiorari, Received & Filed Jan. 23, 1922. Saunders Lewis, Jr., Clerk.

415 UNITED STATES OF AMERICA,  
*Eastern District of Pennsylvania,*  
*Third Judicial Circuit, Set:*

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original stipulation of counsel filed in this Court as return to writ of certiorari in the case of: Henry E. Stevens, Jr., vs. Arthur S. Arnold, et al., No. 2642, on file, and now remaining among the records of the said Court, in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 27th day of January in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty-sixth.

[Seal of the United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,  
*Clerk of the U. S. Circuit Court of Appeals, Third Circuit.*

416 UNITED STATES OF AMERICA, 88:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which Henry E. Stevens, Jr., is appellant, and Arthur S. Arnold, Abram L. Erlanger and Real Estate Title Insurance and Trust Company of Philadelphia, Executors and Trustees under the Will of Samuel F. Nirdlinger, deceased, are respondents, No. 2642, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of New Jersey, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be

417 certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-second day of December, in the year of our Lord one thousand nine hundred and twenty-one.

WM. A. STANSBURY,

*Clerk of the Supreme Court of the United States.*

418 [Endorsed:] File No. 28,553. Supreme Court of the United States, October Term, 1921. No. 598. Henry E. Stevens, Jr., vs. Arthur S. Arnold, Abram L. Erlanger, et al. Writ of Certiorari.

419 & 420 [Endorsed:] File No. 28,553. Supreme Court U. S., October Term, 1921. Term No. 598. Henry E. Stevens, Jr., Petitioner, vs. Arthur S. Arnold, et al. Writ of Certiorari and return. Filed Jan. 28, 1922.